CUSTOMS BULLETIN AND DECISIONS

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U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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This issue contains:

U.S. Customs Service

T.D. 01–71 Through 01–74

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 01–71)

CANCELLATION OF CUSTOMS BROKER LICENSE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs Broker License Cancellation.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is cancelled without prejudice.

Name	*License No.*	*Port Name*
Total Logistic Control LLC	20583	Detroit

Dated: September 28, 2001.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, October 9, 2001 (66 FR 51514)]

(T.D. 01–72)

RETRACTION OF REVOCATION NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a list of revoked Customs broker licenses.

Name	*License No.*	*Port Name*
William F. Joffroy, Jr.	05864	Nogales
Iselda C. Martinez	12357	Miami
Scott M. Pierce	15327	Atlanta
Unit International of Miami	13168	Miami
Eduardo Villareal	13683	Laredo
W.J. Byrnes-Air & Company	00060	San Francisco

Customs broker licenses numbered 05864, 12357, 15327, 13168, 13683, and 00060 remain valid.

Dated: September 28, 2001.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, October 9, 2001 (66 FR 51514)]

(T.D. 01–73)

CANCELLATION OF CUSTOMS BROKER LICENSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs Broker License Cancellations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations (19 CFR 111), the following Customs broker license is cancelled. **Some of these entities may continue to provide broker services under another valid brokerage license.** Because previous publication of some records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name	*License No.*	*Port Name*
Ace Young, Inc.	09667	Chicago
Aeromar USA, Inc.	06159	Washington, DC
Albuquerque Brokerage Co., Inc.	04547	Albuquerque
All Nations Forwarding Import Company, Inc.	06589	Miami
Allround CHB, Inc.	11854	New York
Apple Import Services Inc.	07255	New York
Arthur J Fritz Company	05455	Miami
Arthur J Fritz Company	07646	St. Louis
Arthur J Fritz Company	03160	Honolulu
Arthur J Fritz Company	06951	Boston
Arthur J Fritz Company	06960	Detroit
Arthur J Fritz Company	03763	El Paso
Arthur J Fritz Company	07006	Atlanta
Arthur J Fritz Company	06346	Dallas/Fort Worth
Arthur J Fritz Company	09204	Philadelphia
Arthur J Fritz Company	03492	Portland, ME
Arthur J Fritz Company of Hawaii, Inc.	03520	Honolulu
Arthur J Fritz Company of Los Angeles	03205	Los Angeles
Arthur J Fritz Company, Inc.	03501	New Orleans
Arthur J Fritz Company, Inc.	07362	Charleston

Name	*License No.*	*Port Name*
Arthur J Fritz Company, Inc.	07203	Cleveland
Associated Customhouse Brokers	06041	Buffalo
Autair Customhouse Broker, Inc.	15120	Miami
Bar-Zel Expediters Inc.	04436	New York
Barinco International Corporation	07692	San Francisco
BBC International	05051	San Francisco
Becnel, Gerard	06333	New Orleans
Becnel, Gerard A.	09064	New Orleans
Cammarano, John	06264	New York
Cammarano, Angelo	03648	New York
Cargo Brokers International, Inc.	07217	Miami
Cargo Clearance Services, Inc.	15103	Miami
Celaya Guerin International (CGI)	11938	Philadelphia
Christie, Roy G.W.	05843	Tampa
Clopp, Jerry Bruce	12060	San Francisco
Continental Forwarding Co., Inc.	13026	Cleveland
Craig International, Inc.	13252	Cleveland
DAO Forwarding & Customs Brokerage, Inc.	17406	Baltimore
Davis, Leonard H.	06471	New York
DeAngelus & Associates, Inc.	16916	Washington, DC
Dieterle, Hellmut Michael	08001	San Francisco
Disodado D. Roque Int'l, Inc.	09597	San Francisco
DL Bynum & Company, Inc.	12077	Dallas/Fort Worth
Eagle Warehouse, Inc.	13198	Miami
Emery Distribution Systems, Inc.	05790	Washington, DC
Emery Distribution Systems, Inc.	04560	New Orleans
Evans & Wood Company, Inc.	07922	Dallas/Fort Worth
Expediters International of Washington, Inc.	07259	New York
Expediters International of Washington, Inc.	06946	San Francisco
FB Vandergrift Company, Inc.	07645	San Francisco
Fong, J.B.	06150	San Francisco
Foreign Forwarding, Inc.	13311	Milwaukee
Fritz Air Freight	06658	Dallas/Fort Worth
Gash, Robert William	02215	San Francisco
Global Transportation Systems, Inc.	14830	Washington, DC
Golden Eagle Customs Brokers	11891	Miami
Greenlee, Paul L.	09903	Philadelphia
HB Thomas & Company	01049	San Francisco
Helstern, Jay P.	04845	San Francisco
HH Elder & Company	03138	San Francisco
Hipage Company, Inc.	04042	Washington, DC
HS Dorf Company, Inc. (CA)	01861	San Francisco
Ingham International, Inc.	09383	San Francisco
Interamerica Brokera	13991	Laredo
Interamerican World Transport Corporation	04445	San Francisco
Intercontinental Transport Services, Inc.	03457	Boston
Interdocs, Inc.	14236	Great Falls
International Cargo Group, Inc.	14339	Boston

Name	*License No.*	*Port Name*
International Customs Service, Inc.	06993	San Francisco
International Expediters, Inc.	02603	San Francisco
Jacky Maeder, Ltd.	10446	San Francisco
John S James Company	05615	Tampa
John V Carr & Son, Inc.	01872	Detroit
Jones, Clifford Terrell	03534	San Francisco
Karl Schroff Associates, Inc.	03506	San Francisco
Kearney, Kevin	09098	San Francisco
Kinetsu Intermodal (USA), Inc.	09849	Los Angeles
Kuehne & Nagle, Inc.	05573	San Francisco
Kuehne & Nagle, Inc.	07206	Cleveland
LE Coppersmith, Inc.	03411	San Francisco
LeBlanc, Gregory W.	11384	New Orleans
Lindsey, James O.	05273	New York
Lisoni, Ferruccio	02693	New York
Lorme International Ltd.	04646	New York
Lorme, Jr., Charles A.	04458	New York
Mattoon & Company, Inc.	02053	San Francisco
Medeiros, Gerald	05709	San Francisco
Miami Valley Worldwide, Inc.	11297	Cleveland
Milne & Craighead Customs Brokers (USA) Inc.	07605	San Francisco
Modern Intermodal Traffic Co.	03889	San Francisco
Nippon Express USA, Inc.	07511	San Francisco
Norman G Jensen, Inc.	02176	Seattle
Oakes, Charles Norman	03834	Boston
Oceanic Forwarding Company	03340	San Francisco
Pacific Customhouse Brokerage, Inc.	05042	San Francisco
PC Heck and Company, Inc.	10863	Tampa
Pearson, Hartvig M.	04275	San Francisco
Percival, Wendy Wojnar	10730	New York
Rank International Forwarding, Inc.	14074	Miami
Regis F Kramer Associates	04155	San Francisco
Rol-Pac Services, Inc.	05465	San Francisco
Rubio, Ricardo E.	05221	New York
RW Smith & Company, Inc.	04001	New Orleans
Saga & Associates, Inc.	11153	Los Angeles
Schenker International, Inc.	08077	Cleveland
Scheyer, Jules	09178	New York
SDV Logistics Inc.	15613	Dallas/Fort Worth
Seamodal Transport Corporation	05850	Norfolk
Shields, Jr., William J.	04437	New York
Soto, Jr., Jose Antonio	08025	Laredo
Stecher, Charlene M.T. Lam	05586	Honolulu
Sterling International Services, Inc.	12814	Philadelphia
Three Way Customhouse Brokerage, Inc.	05949	San Francisco
US Group Consolidator, Inc.	13489	San Francisco
Wall Shipping Company, Inc.	14058	Washington, DC
Western Overseas Corporation	06188	San Francisco

Name	*License No.*	*Port Name*
Wilson Group USA, Inc.	04565	Baltimore
Wilson UTC, Inc.	07897	San Francisco
Worldwide Logistics	13870	Baltimore
WR Zanes Company of Louisiana, Inc.	06382	Dallas/Fort Worth
Yolanda Diaz, Inc.	07494	Miami
Yoshioka, Shigeru	03392	San Francisco
Young, David A.	06853	Detroit
Zawacki, Ronald	05815	San Francisco

Dated: September 28, 2001.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, October 9, 2001 (66 FR 51512)]

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19 CFR Parts 10 and 163

(T.D. 01–74)

RIN 1515–AC89

PREFERENTIAL TREATMENT OF BRASSIERES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement those provisions within the United States-Caribbean Basin Trade Partnership Act (the CBTPA) that establish standards for preferential treatment for brassieres imported from CBTPA beneficiary countries. The regulatory amendments contained in this document involve specifically the methods, procedures and related standards that will apply for purposes of determining compliance with the 75 percent aggregate U.S. fabric components content requirement under the CBTPA brassieres provision.

DATES: Interim rule effective October 4, 2001. Comments must be received on or before December 3, 2001.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Legal issues: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

Other issues: Dick Crichton, Office of Field Operations (202–927–0162).

SUPPLEMENTARY INFORMATION:

BACKGROUND

United States-Caribbean Basin Trade Partnership Act On

May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the "Act"), Public Law 106–200, 114 Stat. 251. Title II of the Act concerns trade benefits for the Caribbean Basin and is referred to in the Act as the "United States-Caribbean Basin Trade Partnership Act" (the "CBTPA"). Within Subtitle B of Title II of the Act, section 211 sets forth temporary provisions for the purpose of providing additional trade benefits to Caribbean Basin countries designated by the President as CBTPA beneficiary countries.

Subsection (a) of section 211 of the Act revised section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute codified at 19 U.S.C. 2701–2707). The CBI is a duty preference program that applies to exports from those Caribbean Basin countries that have been designated by the President as program beneficiaries. Section 213(b) as amended by section 211(a) of the Act consists of five principal paragraphs. Paragraph (1) of amended section 213(b) lists six categories of goods which are excluded from standard duty-free treatment under the CBI (one of these categories consists of textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date). Paragraph (2) of amended section 213(b) provides, during the "transition period," for the application of preferential treatment (that is, entry in the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels) to specific textile and apparel articles; thus, paragraph (2) operates in part as an exception to the exclusion rule for textile and apparel articles under paragraph (1). Paragraph (3) of amended section 213(b) applies to the goods excluded from CBI duty-free treatment under paragraph (1) other than textile and apparel articles and in effect provides for the application of NAFTA tariff treatment to those goods during the "transition period." Paragraph (4) of amended section 213(b) sets forth regulatory and related standards for purposes of preferential treatment under paragraph (2) or (3) and, among other things, requires the use of Certificate of Origin procedures modeled on the NAFTA. Paragraph (5) of amended section 213(b) sets forth definitions and special rules and, among other things, defines "transition period" for purposes of section 213(b) as meaning, with respect to a CBTPA beneficiary country, the period that begins on October 1, 2000, and ends on the earlier of September 30, 2008, or the date on which a free trade agreement enters into force with respect to the United States and the CBTPA beneficiary country and de-

fines "CBTPA beneficiary country" for purposes of section 213(b) as meaning any "beneficiary country" as defined in section 212(a)(1)(A) of the CBI statute (19 U.S.C. 2702(a)(1)(A)) which the President designates as a CBTPA beneficiary country.

One of the specific textile and apparel article categories to which preferential treatment may apply during the transition period under paragraph (2) of amended section 213(b) consists of brassieres described in paragraph (2)(A)(iv) as follows:

> (iv) CERTAIN OTHER APPAREL ARTICLES.—(I) Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the CBTPA beneficiary countries, or both.
>
> (II) During the 1-year period beginning on October 1, 2001, and during each of the six succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabric components formed in the United States that are used in the production of all such articles of that producer or entity during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.
>
> (III) The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States used in the production of such articles of that producer or entity in the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

Thus, the preferential treatment available to brassieres under the CBTPA amendments represents a departure from historical practice under the CBI which (1) excluded most textile and apparel articles, including brassieres, from CBI duty-free treatment and (2) had no provision regarding exemption from quantitative restrictions, limitations or consultation levels. Although brassieres may receive preferential treatment under the CBTPA during the first year of the "transition period" (that is, through September 30, 2001) without regard to any U.S. fabric component content requirement, for each year after that first year the 75 percent U.S. fabric component content requirement under paragraph (2)(A)(iv)(II) of the statute (or the 85 percent U.S. fabric component content requirement under paragraph (2)(A)(iv)(III) of the statute) must have been met by the producer or entity controlling pro-

duction for all brassieres produced and entered in the United States during the preceding year in order for the U.S. importer to be able to file a claim for preferential treatment on brassieres during the current year. If a producer or entity controlling production fails to meet the 75 percent standard in a given year, then during the entire following year claims for preferential treatment may not be made on its brassieres and the 85 percent standard must be met in order for its brassieres to be eligible for preferential treatment in the next year. Under the statute, preferential treatment for brassieres under the CBTPA will terminate when the "transition period" ends either by adoption of a new trade agreement between the United States and the CBTPA beneficiary country or on September 30, 2008, whichever is earlier. If preferential treatment under the CBTPA terminates without adoption of a new free trade agreement, then the prior CBI regime would come back into operation and brassieres would revert to dutiable status and could be subject to quantitative restrictions, limitations or consultation levels.

Presidential and Regulatory Action Under the CBTPA

On October 2, 2000, President Clinton signed Proclamation 7351 (published in the Federal Register at 65 FR 59329 on October 4, 2000) to implement the CBTPA. This Proclamation (1) included a list of countries designated as CBTPA beneficiary countries, (2) authorized the United States Trade Representative to make certain determinations regarding designated beneficiary countries under paragraph (4) of amended section 213(b) and to publish a notice of those determinations and of consequential changes to the HTSUS in the Federal Register, and (3) set forth, in an Annex, modifications to the HTSUS to accommodate the preferential treatment and other CBTPA import provisions. Included in those HTSUS modifications was the addition of a new Subchapter XX to Chapter 98 to reflect the specific textile and apparel article provisions of paragraph (2) of amended section 213(b), including, in subheading 9820.11.15, the brassieres of paragraph (2)(A)(iv). Subsequently, on October 10, 2000, the United States Trade Representative published in the Federal Register (65 FR 60236) a notice, with an effective date of October 2, 2000, setting forth a determination regarding certain designated CBTPA beneficiary countries and making conforming changes to the HTSUS as required by Proclamation 7351 and thus putting into effect the trade benefit provisions of the CBTPA.

On October 5, 2000, Customs published in the Federal Register (65 FR 59650) as T.D. 00–68, with an effective date of October 1, 2000, an interim rule document setting forth amendments to the Customs Regulations which included, among other things, the addition of new §§ 10.221 through 10.227 (19 CFR 10.221 through 10.227) to implement those textile and apparel preferential treatment provisions within paragraphs (2), (4) and (5) of amended section 213(b) of the CBI statute that relate to U.S. import procedures. The regulatory amendments contained in that document reflected and clarified the statutory standards for the trade benefits applicable to textile and apparel articles under the

CBTPA and also included specific documentary, procedural and other related requirements that must be met in order to obtain those benefits. Section 10.223(a) of those regulations describes the various categories of textile and apparel articles to which preferential treatment may apply and includes, in paragraph (a)(6), a reference to brassieres as described in paragraph (2)(A)(iv)(I) of amended section 213(b).

The regulatory texts in T.D. 00–68 only set forth the general brassiere product description provision of subclause (I) of paragraph (2)(A)(iv) of the statute and therefore did not address the aggregate cost or value provisions of subclauses (II) and (III) of paragraph (2)(A)(iv), for two reasons. First, as indicated above, those aggregate cost or value provisions do not have direct application to imported goods until the second year of the statutory 8-year "transition period." Second, there were a number of interpretive and operational issues regarding implementation of the subclause (II) and (III) provisions that Customs was unable to resolve within the relatively short time period available for preparation and timely publication of the basic CBTPA implementing regulations in T.D. 00–68.

Customs recognizes, however, that appropriate regulatory standards should be in place for reference by the general public by October 1, 2001. Customs notes in this regard that subclause (III) of paragraph (2)(A)(iv) requires that Customs develop and implement methods and procedures to ensure ongoing compliance with the aggregate 75 percent U.S.-formed fabric components cost requirement of subclause (II). Moreover, even though the 75 percent aggregate requirement does not control the application of preferential treatment to goods entered prior to October 1, 2001, under the terms of subclause (II) the 75 percent requirement must have been met in the aggregate for all articles entered during each preceding year (that is, starting with the year beginning on October 1, 2000, and ending on September 30, 2001) in order for preferential treatment to be applied to articles entered during the following year (that is, starting with the year that begins on October 1, 2001). Therefore, for purposes of claiming CBTPA preferential treatment on brassieres entered during the period from October 1, 2001, through September 30, 2002, the U.S. importer and the producer or entity controlling production must, for record keeping and related purposes, be aware of the standards Customs will apply in assessing compliance with the 75 percent requirement during that preceding year.

Accordingly, this document sets forth interim amendments to the Customs Regulations to implement the aggregate cost or value provisions of subclauses (II) and (III) of paragraph (2)(A)(iv) of amended section 213(b). In view of the proximity of the publication date of these interim regulations to October 1, 2001, Customs has issued instructions to the various ports to allow importers to amend their entries as may be necessary to take into account the new procedures and other requirements of these interim regulations. The regulatory amendments are discussed in more detail below.

DISCUSSION OF INTERIM AMENDMENTS

Section 10.223(a)(6)

This section has been modified by the addition of a proviso at the end to indicate that the requirements of new § 10.228 also must be met.

Section 10.223(a)(7)

Customs notes that § 10.223(a)(7) covers apparel articles that are constructed of fabrics or yarns that are considered to be in "short supply" for purposes of Annex 401 of the NAFTA. Customs further notes that the Annex 401 rule for articles classified in subheading 6212.10, HTSUS, requires only the performance of certain specified production processes (that is, "both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties") and includes no requirements regarding the source of the fabrics or yarns. Thus, as the Annex 401 rule for subheading 6212.10, HTSUS, includes no designation of fabrics or yarns in "short supply," Customs believes that brassieres of subheading 6212.10, HTSUS, are not covered by § 10.223(a)(7).

This view is supported by the decision by Congress to create a specific CBTPA provision providing for preferential treatment of brassieres (paragraph (2)(A)(iv) of amended § 213(b), which is reflected in § 10.223(a)(6) of the regulations). Were articles of subheading 6212.10, HTSUS, intended to be included with the articles falling within the scope of § 10.223(a)(7) which corresponds to paragraph (2)(A)(v)(I) of amended section 213(b), Congress would not have created a separate provision with specific fabric sourcing requirements which must be met in order for brassieres of subheading 6212.10, HTSUS, to receive preferential treatment under the CBTPA.

The text of § 10.223(a)(7) has been appropriately modified to reflect this interpretation.

New § 10.228

This new section addresses the aggregate cost or value provisions of subclauses (II) and (III) of paragraph (2)(A)(iv) of amended section 213(b). Although the text is in most cases self-explanatory, the following specific points are noted regarding this new provision:

1. The definitions of "cost" and "declared customs value" in paragraphs (a)(4) and (a)(5) are based in part on principles reflected in the Customs Regulations provisions that apply for purposes of subheading 9802.00.80, HTSUS (see, in particular, 19 CFR 10.17) and under the CBI (see, in particular, 19 CFR 10.196(c)). Moreover, as regards the definition of "declared customs value" in paragraph (a)(5), Customs notes that because the circumstance in which this terminology appears in the statute does not relate to a point at which a value is normally declared to U.S. Customs, the text includes multiple factual circumstances that reflect all conditions under which a value of fabric could exist for purposes of comparison to the "cost" of fabric components defined in paragraph (a)(4).

2. Paragraph (b)(1) reflects the 75 and 85 percent U.S. fabric component content requirements of paragraphs (2)(A)(iv)(II) and (III) of the statute and also requires the U.S. importer to include a specific documentation identifier assigned by Customs (see the discussion of paragraph (c) below) when filing the claim for preferential treatment. Customs considers a specific documentation identifier necessary. The identifier, which is to be noted on the entry summary or warehouse withdrawal, will serve both the importer and Customs. The identifier serves the importer as it is a method to indicate that the importer has at the time of entry a specific basis for claiming preferential treatment—that either the 75 or the 85 percent requirement has been met in the preceding year—for the brassieres being entered and thus will facilitate the entry and clearance process. The identifier serves Customs as it is a means by which Customs can tie a particular entry to the fact that a producer of brassieres or an entity controlling production of brassieres has met the 75 or 85 percent requirement. This is essential in view of the fact that compliance with the 75 or 85 percent requirement must be established by a producer or by an entity controlling production who might not be the U.S. importer.

3. Paragraph (b)(2) sets forth a number of general rules that Customs believes apply under paragraphs (b)(1)(i) and (b)(1)(ii) and for purposes of preparing and filing the documentation prescribed under paragraph (c) by the producer or entity controlling production. Paragraph (b)(2) also includes some examples to illustrate the application of those rules.

4. Paragraph (c) provides that, in order for an importer to be able to include the distinct and unique identifier on the entry summary or warehouse withdrawal as required under paragraph (b)(1)(iii), the producer or entity controlling production must have filed with Customs a declaration of compliance with the applicable 75 or 85 percent requirement. Paragraph (c) further provides that Customs will advise the filer of the identifier assigned to that declaration of compliance so that the filer may provide that number to the appropriate U.S. importers for inclusion on current entry summaries or warehouse withdrawals covering articles of the producer or entity controlling production in question. So that each affected importer might know what the appropriate identifier is prior to the arrival of the goods in the United States, paragraph (c) provides that the declaration of compliance should be filed at least 10 days prior to the date of the first shipment of the goods to the United States; Customs believes that this 10-day period should afford sufficient time for Customs to assign the identifier to the declaration of compliance and provide the identifier to the producer or entity controlling production and for the producer or entity to then provide it to the appropriate U.S. importer(s). Paragraph (c) also provides for the filing of an amended declaration of compliance or for following other appropriate procedures if the initial filing was based on an estimate because information for the whole year was not available at the time of the initial filing and the final data differs from the estimate, or if the producer or

entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information. Finally, paragraph (c) identifies the specific Customs office at which the filing must take place and prescribes the form the declaration of compliance must take and includes instructions for its completion.

5. Paragraph (d) sets forth standards regarding the verification of a declaration of compliance and is similar to the rules that apply for purposes of verification of CBTPA preferential treatment claims under § 10.227 but with changes to reflect the current context. Paragraph (d) also specifies the nature of the accounting books and documents that Customs expects to see when verifying the statements made on a declaration of compliance. Finally, so that affected U.S. importers will know when Customs, after performing a verification of a declaration of compliance, has determined that articles of the producer or entity controlling production in question failed to meet the applicable 75 or 85 percent requirement, paragraph (d) provides that Customs will publish a notice of that determination in the Federal Register.

Part 163

The Appendix to Part 163 of the Customs Regulations (19 CFR Part 163), which sets forth a list of entry records (that is, records that are required by statute or regulation for the entry of merchandise—the "(a)(1)(A)" list), has been modified by the addition of a listing covering the CBTPA declaration of compliance for brassieres.

COMMENTS

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS AND THE REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the United States-Caribbean Basin Trade Partnership Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed ef-

fective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information contained in this interim rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1515–0226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 10

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, and the specific authority citation for §§ 10.221 through 10.227 and §§ 10.231 through 10.237 is revised to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * * * *

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*.

2. In § 10.222, the introductory text is amended by removing the reference "10.227" and adding, in its place, the reference "10.228".

3. In § 10.223, paragraph (a)(6) is amended by adding at the end before the semicolon the words ", provided that any applicable additional requirements set forth in § 10.228 are met" and paragraph (a)(7) is amended by adding after the words "Apparel articles" at the beginning of the sentence the words ", other than articles described in paragraph (a)(6) of this section,".

4. A new § 10.228 is added under the center heading "TEXTILE AND APPAREL ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT to read as follows:

§ 10.228 Additional requirements for preferential treatment of brassieres.

(a) *Definitions*. When used in this section, the following terms have the meanings indicated:

(1) *Producer*. "Producer" means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in a CBTPA beneficiary country.

(2) *Entity controlling production*. "Entity controlling production" means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in a CBTPA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabric components formed in the United States*. "Fabric components formed in the United States" means components that were knit to shape from yarns in the United States and components that were cut or otherwise produced in the United States from fabric that was formed in the United States by a weaving, knitting, needling, tufting, felting, entangling or other process, whether or not the components incorporate non-textile materials.

(4) *Cost*. "Cost" when used with reference to fabric components formed in the United States means:

(i) The price of the fabric components when last purchased, f.o.b. United States port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. United States port of exportation, the price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. United States port of exportation price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if that price is unreasonable, all reasonable expenses incurred in the growth, production, manufacture or other processing of the fabric components, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs incurred in transporting the components to the United States port of exportation.

(5) *Declared customs value.* "Declared customs value" when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabric components formed in the United States less the cost or value of any non-textile materials, and less the U.S. producer's expenses for cutting or other processing to create the components other than knitting to shape, that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, that is, fabric not incorporated in a fabric component formed in the United States, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents or, if the price is other than f.o.b. port of exportation, the price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing and other finishing operations applied to the fabric if not included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if that cost is unreasonable, all reasonable expenses incurred in the growth, production or manufacture of the fabric, including the cost or value of materials, general expenses and embroidering and dyeing, printing, and other finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing and other costs incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components that were purchased by the producer or entity controlling production, either the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents (or, if the price is other than f.o.b. port of exportation, the price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price) or that f.o.b. port of exportation price less the cost or value of any non-textile materials and less expenses for cutting or other processing to create the components other than knitting to shape, that the producer or entity controlling production can verify; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if that cost is unreasonable, all reasonable expenses incurred in the growth, production or manufacture of the fabric components, including the cost or value of materials and general expenses, but excluding the cost or value of any non-textile materials and excluding expenses for cutting or other processing to create the components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing and other costs incurred in transporting the components to the port of exportation.

(6) *Year.* "Year" means the 1-year period beginning on October 1, 2000, and ending on September 30, 2001, and any of the seven succeeding 1-year periods.

(7) *Entered.* "Entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General.* During the year that begins on October 1, 2001, and during any subsequent year, articles described in § 10.223(a)(6) of a producer or an entity controlling production will be eligible for preferential treatment only if:

(i) The aggregate cost of fabric components formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that were produced and entered during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric contained in all of those articles of that producer or that entity controlling production that were produced and entered during that year; or

(ii) In a case in which Customs determines that the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabric components formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that were produced and entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric contained in all of those articles of that producer or that entity controlling production that were produced and entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.225, the importer records on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by Customs to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must conform to the description set forth in § 10.223(a)(6) and must be both produced and entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Fabric components and fabrics that constitute findings or trimmings of foreign origin for purposes of § 10.223(c) are not to be consid-

ered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(D) An article is considered to be produced in the year in which it reaches the condition in which it will be shipped to the United States;

(E) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production during the immediately preceding year, must first establish compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(F) Beginning October 1, 2001, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls;

(H) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(I) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production; and

(J) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance.

(ii) *Examples*. The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. A CBTPA beneficiary country producer of articles that meet the description in § 10.223(a)(6) sends 50 percent of that produc-

tion to the CBTPA region markets and the other 50 percent to the U.S. market; the cost of the fabric components formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the CBTPA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabric components formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. An entity controlling production of articles that meet the description in § 10.223(a)(6) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 3. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic straps less than 1 inch in width produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the description in § 10.223(a)(6) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 percent standard, the foreign-origin elastic straps are to be disregarded entirely because they constitute findings or trimmings for purposes of § 10.223(c), and the front subassemblies are countable as components formed in the United States because they were used in the production of articles that were both produced and entered in the same year.

Example 4. A CBTPA beneficiary country producer's entire production of articles that meet the description in § 10.223(a)(6) is sent to a U.S. importer in two separate shipments, one covering articles produced and shipped in February and one covering articles produced and shipped in June of the same calendar year; the articles produced and shipped in February do not meet the minimum 75 percent standard but the two shipments, taken together, do meet that standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a Customs bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of

that calendar year. The CBTPA beneficiary country producer may not prepare a valid declaration of compliance for any portion of these two shipments because the articles in the first shipment did not meet the minimum 75 percent standard and the articles in the second shipment were not both produced and entered in the same year and therefore cannot be included either on a declaration of compliance that would apply to the articles of the first shipment or on a declaration of compliance that would apply to articles produced in a different year.

Example 5. A producer in the second year begins production of articles exclusively for the U.S. market that meet the description in § 10.223(a)(6); the articles do not meet the minimum 75 percent standard until the third year; the articles fail to meet the minimum 75 percent standard during the fourth year; and the articles do not attain the 85 percent standard until the sixth year. The producer's articles may not receive preferential treatment during the second year because there was no production in the immediately preceding year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 75 percent standard was not met in the immediately preceding (that is, second) year. The producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 75 percent standard in the immediately preceding (that is, third) year. The producer's articles may not receive preferential treatment during the fifth year because the 75 percent standard was not met in the immediately preceding (that is, fourth) year. The producer's articles may not receive preferential treatment during the sixth year because the 85 percent standard has become applicable and was not met in the immediately preceding (that is, fifth) year. The producer's articles are eligible for preferential treatment during the seventh year because the 85 percent standard was met in the immediately preceding (that is, sixth) year, and during that seventh year the 75 percent standard is applicable for purposes of determining whether the producer's articles are eligible for preferential treatment in the following (that is, eighth) year.

Example 6. An entity controlling production (Entity A) uses five CBTPA beneficiary country producers (Producers 1–5), all of whom produce only articles that meet the description in § 10.223(a)(6); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) who sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract

with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that he controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with Customs, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, Customs will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the declaration of compliance should be filed with Customs at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the Customs office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in

writing advise both the Customs office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form*. The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

Declaration of Compliance for Brassieres (19 CFR 10.223(a)(6) and 10.228)	
1. Year beginning date: October 1, ____. Year ending date: September 30, ____.	Official U.S. Customs Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer: Full name and address:	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabric components formed in the United States that were used in the production of all articles that were produced and entered during the year: __	
5. Aggregate declared customs value of the fabric contained in all articles that were produced and entered during the year: _____	
6. I declare that the aggregate cost of fabric components formed in the United States that were used in the production of all articles that were produced and entered during the year as stated above was at least 75 _____ or 85 _____ (check one) percent of the aggregate declared customs value of the fabric contained in all articles that were produced and entered during the year as stated above.	
7. Authorized signature: Date:	8. Name and title (print or type):

(ii) *Preparation*. The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the CBTPA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a

list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were both produced and entered during the year identified in block 1;

(E) In block 6, the 75 percent space should be checked if that figure applies under paragraph (b)(1) of this section for the year identified in block 1, and the 85 percent space should be checked if that figure applies under paragraph (b)(2) of this section for the year identified in block 1; and

(F) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to Customs upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, U.S. Customs Service, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification Customs deems necessary. In the event that Customs for any reason is prevented from verifying the statements made on a declaration of compliance, Customs may deny any claim for preferential treatment made under § 10.225 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to Customs by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles described in § 10.223(a)(6) that were produced and exported to the United States and entered during the preference year in question, whether or not a claim for preferential treatment was made under § 10.225. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabric components formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabric components formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric or component. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric or component. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must identify the date of production of the finished article which must be referenced to the original purchase order or lot number covering the fabric or component used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the year and the inventory closing balance.

(2) *Notice of determination*. If, based on a verification of a declaration of compliance filed under this section, Customs determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, Customs will publish a notice of that determination in the Federal Register.

PART 163—RECORDKEEPING

1. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

APPENDIX TO PART 163—INTERIM (a)(1)(A) LIST

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IV. * * *

§ 10.228 CBTPA Declaration of Compliance for brassieres

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CHARLES W. WINWOOD,
Acting Commissioner of Customs.

Approved: October 2, 2001.

GORDANA S. EARP,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, October 4, 2001 (66 FR 50534)]

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 4, 2001.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

DOUGLAS M. BROWNING,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN GARMENTS MADE OF PLASTIC WITH REINFORCING TEXTILE MATERIAL

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and revocation of treatment relating to the classification of certain garments made of plastic.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, 19 U.S.C. 1625(c), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain garments made of plastic in which textile fabric is present merely to reinforce the plastic. Customs also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before November 16, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textile Classification Branch: (202) 927–2518.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, 19 U.S.C. §1484, the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, 19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification of certain garments made of plastic in which textile fabric is present merely to reinforce the plastic. Although in this notice Customs is specifically referring to one New York Ruling Letter (NY), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, which classified the merchandise contrary to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, 19 U.S.C. 1625(c)(2), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of

the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importation of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importation of merchandise subsequent to the effective date of the final decision on this notice.

The Customs Service in NY F83735 (Mar. 20, 2000) classified certain garments in subheading 6113.00.1005, HTSUSA, as being garments of knitted fabric that had an outer surface impregnated, coated, covered or laminated with a plastic material that completely obscured the underlying fabric. New York Ruling Letter F83735 is set forth as "Attachment A" to this document.

It is now Customs position that the garments are properly classified in subheading 3926.20.9050, HTSUSA, because the garments are composed of a cellular plastic and the knitted textile fabric backing is present merely for reinforcing purposes. Proposed Headquarters Ruling Letter (HQ) 964385 revoking NY F83735 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY F83735 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 964835. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 27, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 20, 2000.
CLA–2–61:RR:NC:3:353 F83735
Category: Classification
Tariff No. 6113.00.1005

MR. SAMUEL J. ATTIAS
S.A.S.C.O. TRADING, INC.
1359 Broadway, Suite 1808
New York, NY 10018

Re: The tariff classification of men's, big boys and little boys jackets from Hong Kong.

DEAR MR. ATTIAS:

In your letter dated March 1, 2000 you requested a tariff classification ruling. The sample will be returned to you as requested.

The submitted sample, Style M30033 is a man's jacket composed of knit 100% man-made fiber fabric with an embossed PVC plastic material which completely obscures the underlying fabric. The garment has a quilted lining, long sleeves, two slash pockets below the waist, a left breast zippered pocket, pointed collar and a full front zippered closure. You also state that Styles Y30333, big boys and B30533, little boys will be made of the identical fabric.

The applicable subheading for the man's jacket, Styles M30033, big boys jacket, Y30333 and little jacket, B30533 will be 6113.00.1005, Harmonized Tariff Schedule of the United States (HTS), which provides for "Garments, made up of knitted or crocheted fabrics of heading 5903, 5906 or 5907: Having an outer surface impregnated, coated, covered, or laminated with rubber or plastics material which completely obscures the underlying fabric, Coats and jackets: Men's or boys'." The rate of duty will be 5.3% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212–637–7084.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA–2 RR:CR:TE 964385 jsj
Category: Classification
Tariff No. 3926.20.9050

MR. SAMUAL J. ATTIAS
S.A.S.C.O. TRADING, INC.
1359 Broadway
Suite 1808
New York, NY 10018

Re: Reconsideration of NY F83735; Subheading 3926.20.9050, HTSUSA; "Of Plastic" and "Of Fabric"; Textile Fabric Merely Reinforcing Plastic; Style Numbers: M30033, Y30333 and B30533.

DEAR MR. ATTIAS:

The purpose of this correspondence is to respond to a request of the National Commodity Specialist Division of the Customs Service to reconsider New York Ruling Letter F83735.

This reconsideration is being issued subsequent to a review of the following: (1) NY F83735 (Mar. 20, 2000); (2) Customs Service laboratory report number: 2–2000–10588; (3) Correspondence of S.A.S.C.O. Trading, Inc. dated May 31, 2000; and (4) A sample identified with style numbers: M30033, Y30333 and B30533.

Facts:

Garment style M30033 is a long sleeve jacket with a quilted lining that falls below the waist of the wearer. A Customs laboratory report establishes that it is "composed knit fabrics which have been coated, covered or laminated on one surface with a polyvinyl chloride type of cellular plastics material."

The jacket features a pointed collar and a full front zipper closure. The sleeve cuffs tighten through the use of a section of material that wraps over the wrist of the wearer and secures to the sleeve by means of a hook and loop fastener system.

The jacket features two slash pockets, one on each side of the garment below the waistline and a left breast zipper pocket. The breast pocket has a storm flap, but neither the slash pockets nor the front zipper closure have storm flaps. A small metal plate with the phrase "BRAVE ELTEND" is attached to the jacket immediately below the breast pocket.

S.A.S.C.O. Trading advises the Customs Service that, in addition to style M30033, it will import garments of identical material composition, but in different sizes, in styles Y30333 and B30533.

The Customs Service is advised that the country of origin of the garments is China.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described garments identified as style M30033, Y30333 and B30533?

Law and Analysis:

The United States Customs Service issued New York Ruling Letter F83735 on March 20, 2000, classifying men's style M30033, big boy's style Y30333 and little boy's style B30533 in subheading 6113.00.1005, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). S.A.S.C.O. Trading subsequently contacted Customs by telephone and correspondence, and advised Customs that the garments in issue were constructed of the same material as the garments addressed in NY F83736 (Mar. 20, 2000). New York Ruling Letter F83736 classified styles M30013, Y30319 and B30513 in subheading 3926.20.9050, HTSUSA. The National Commodity Specialist Division, subsequent to receipt of S.A.S.C.O.'s additional inquiry, a sample garment of the material of styles M30033, Y30333 and B30533, and a Customs laboratory report, forwarded a request to Customs Headquarters seeking reconsideration of NY F83736.

The responsibility for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated rests with the U.S. Customs Service.[1] The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.[2]

General Rule of Interpretation 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." *General Rule of Interpretation 1*. General Rule of Interpretation 1 further provides that merchandise which can not be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation. *See General Rule of Interpretation 1*.

Commencing classification of the garments style numbers M30033, Y30333 and B30533 in accordance with the dictates of GRI 1, the Customs Service examined the headings of the HTSUSA. The initial issue to be resolved in classifying these garments at the heading level is to determine whether they are properly classified as articles "of knitted * * * fabrics" in heading 6113, HTSUSA, or articles "of plastics" in heading 3926, HTSUSA.

Customs specifically notes that the analysis at this stage of classifying the garments is analysis pursuant to GRI 1. The focus is on the terms of the headings and the section and

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[1] *See* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100–576, at 549 (1988) *reprinted in* 1988 U.S. Code Cong. and Adm. News 1547, 1582.

[2] *See* 19 U.S.C. 1202 (West 1999); *See generally, What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at www.customs.gov, search "Importing & Exporting" and then "U.S. Customs Informed Compliance Publications."

chapter notes. Classification of the garments as being either "of knitted * * * fabrics" in heading 6113, HTSUSA, or "of plastics" in heading 3926, HTSUSA, will preclude classification in the other. Customs has not resorted to GRI 3 because the garments are either "of knitted * * * fabrics" or "of plastics" and, therefore, are not *prima facie* classifiable under two or more headings. *See General Rule of Interpretation 3.*

Heading 6113, HTSUSA, provides for "[g]arments, made up of knitted or crocheted fabrics of heading 5903, 5906 or 5907." Heading 5903, HTSUSA, provides for the classification of "[t]extile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902[3]." The garments under consideration are composed of a one hundred percent man-made knitted fabric that has been coated, covered or laminated on the exterior surface with a polyvinyl chloride cellular plastic.

A review of the Chapter Notes to Chapter 59 further addresses the question of whether the jackets are properly classified in heading 6113, HTSUSA. Chapter 59, Note 2 states that heading 5903, HTSUSA, applies to "[t]extile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular)." *Chapter 59, Note 2 (a), HTSUSA.* Chapter 59 Note 2 (a) does, however, state exceptions to the general principle.

The Chapter Notes to Chapter 59 announce six exceptions to the general principle that heading 5903, HTSUSA, applies to textile fabrics, impregnated, coated, covered or laminated with plastics. The exception of relevance to the instant legal analysis is exception five. Chapter 59 Note 2 (a) (5) provides that "[p]lates, sheets or strip of *cellular* plastics, combined with textile fabric, where the *textile fabric is present merely for reinforcing purposes*" are properly classified in Chapter 39 rather than Chapter 59. (Emphasis added) *Chapter 59, Note 2 (a) (5), HTSUSA.*

The garments under consideration, as previously stated, are composed of cellular plastic. Since the plastic is cellular, the issue that must be resolved is whether the knitted textile fabric is present merely for reinforcing purposes.

It is the conclusion of the Customs Service that the textile fabric to which the plastic is coated, covered or laminated, is present merely to reinforce the plastic. The purpose of the fabric backing is to prevent the outer plastic shell from tearing or stretching. *See* HQ 085100 (Sept. 11, 1989). The textile fabric is not present for more than the purpose of reinforcing the plastic outer shell. *Cf.* HQ 086358 (June 19, 1991) (textile substrate provides comfort to the wearer of gloves and prevents trapping of perspiration); HQ 088207 (June 4, 1991) (textile component of candy box provides decorative and consumer appeal resulting in article being considered to be made of textile material rather than of plastics); *See also General Explanatory Notes, Chapter 39, **Plastics and textile combinations*** (providing that plastics and textile combinations are essentially governed by Note 1(h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59, and that plates, sheets and strip of cellular plastics combined with textile fabric where the textile is present merely for reinforcing purposes are products covered by Chapter 39).

Application of the chapter notes to Chapter 59, applied though the analysis of heading 6113, HTSUSA, instructs Customs that the garments are considered to be "of plastic" rather than being "of knitted * * * fabrics." The garments are, therefore, properly classified in Chapter 39, HTSUSA. The heading, pursuant to GRI 1, that provides for the classification of the merchandise is heading 3926, HTSUSA.

Having concluded that the garments are properly classified in heading 3926, HTSUSA, as being "of plastic," the correct subheading remains to be determined. The Customs Service, pursuant to General Rule of Interpretation 6, will apply GRI 1 to the subheading levels of heading 3926, HTSUSA. General Rule of Interpretation 6 provides for the application of GRI 1 through GRI 5 for the purpose of determining the correct subheading of a heading when comparing subheadings at the same level. *See General Rule of Interpretation 6, HTSUS.*

Applying GRI 1 at the subheading levels pursuant to GRI 6, the garments in issue are classified in subheading 3926.20.9050, HTSUSA. Subheading 3926.20.9050, HTSUSA, provides:

3926	Other articles of plastics and articles of other materials of heading 3901 to 3914:
3926.20	Articles of apparel and clothing accessories (including gloves):
	Other:

[3] Heading 5902, HTSUSA, addresses tire cord fabric of high tenacity yarn.

3926.20.90	Other;
3926.20.9050	Other.

Holding:

The garments, style numbers M30033, Y30333 and B30533, are classified in subheading 3926.20.9050, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is five (5) percent, *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN TEXTILE TIE BACKS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of certain textile tie backs (curtain tiebacks).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain textile tie backs. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before November 16, 2001.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 927–1735.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective.

Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI , this notice advises interested parties that Customs intends to modify one ruling relating to the tariff classification of certain textile tie backs. Although in this notice Customs is specifically referring to one Headquarters Rulings Letters (HQ), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C.1625 (c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to this notice.

In New York Ruling Letter (NYRL) H81076, dated May 24, 2001, the Customs Service classified certain textile curtain tiebacks under subheading 6307.90.9989, HTSUSA, which covers other made up articles. NYRL H81076 is set forth as "Attachment A" to this document.

It is now Customs position that the proper classification for the textile curtain tiebacks is subheading 6304.93.0000, HTSUSA, as other fur-

nishing articles of synthetic materials. Proposed Headquarters Ruling Letter (HQ) 965219 revoking NYRL H81076 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NYRL H81076, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965219, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 28, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 24, 2001.

CLA-2-63:RR:NC:TA:351 H81076
Category: Classification
Tariff No. 6307.90.9989

MR. LANCE SLOVES
J.C. PENNEY PURCHASING CORPORATION, INC.
6501 Legacy Drive
Plano, TX 75024-3698

Re: The tariff classification of "Textile Tie Backs" from Turkey.

DEAR MR. SLOVES:

In your letter dated May 10, 2001, you requested a tariff classification ruling.

The sample submitted is a representation for "Textile Tie Backs," item numbers 742-0920 and 742-0797. The tiebacks are made of a 100 percent polyester woven textile fabric panel. The panel is folded lengthwise and sewn closed on all sides. Attached onto each end is a hook and loop fastener.

The applicable subheading for the "Textile Tie Backs" will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles * * * Other. The rate of duty will be 7 percent ad valorem.

Articles classifiable under subheading 6307.90.9989, HTS, which are products of Turkey, are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" and then search for the term "GSP".

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 212–637–7086.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 965219 ttd
Category: Classification
Tariff No. 6304.93.0000

MR. LANCE SLOVES
J.C. PENNEY PURCHASING CORPORATION, INC.
6501 Legacy Drive
Plano, TX 75024–3698

Re: Reconsideration of New York ruling letter H81076, dated May 24, 2001.

DEAR MR. SLOVES:

This letter is pursuant to Customs Headquarters' reconsideration of New York Ruling Letter (NYRL) H81076, dated May 24, 2001, regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain textile curtain tiebacks. After review of that ruling, Headquarters has determined that the classification of the curtain tiebacks in subheading 6307.90.9989, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NYRL H81076.

Facts:

The articles at issue are "Textile Tie Backs" (tiebacks), used to secure curtains to the side of a window and made from 100 percent polyester woven fabric panels, item numbers 742–0920 and 742–0797. Each panel is folded lengthwise and sewn closed on all sides. Each item measures approximately 2 x 11 inches and has hook and loop tapes sewn to the ends.

Issue:

Whether the subject items are classifiable under heading 6304, HTSUSA, which provides for other furnishing articles or under heading 6307, HTSUSA, which provides for other made up articles.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied in their sequential order.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F. 3rd 1098, 1109 (Fed. Cir. 1995).

The headings under consideration are heading 6304, HTSUSA, which covers *inter alia*, other furnishing articles and heading 6307, HTSUSA, which covers other made up textile articles.

Although heading 6303, HTSUSA, provides for curtains, it does not provide for parts and accessories for curtains, and thus, the tiebacks are not classifiable in heading 6303. Heading 6304, HTSUSA, provides for other furnishing articles, excluding those of heading 9404, HTSUSA. Heading 9404 covers articles of bedding, which the instant articles clearly are not. The EN to heading 6304 provide that the heading covers furnishing articles of textile materials. Moreover, the EN expressly name curtain loops among those articles listed as exemplars for heading 6304, HTSUSA. While the term "curtain loop" is not defined in the tariff or the EN, The Random House Webster's Unabridged Dictionary, (2001), defines a "tieback" as "a strip or loop of material, heavy braid, or the like, used for holding a curtain back to one side." The Merriam Webster Online: Collegiate Dictionary, (2000), defines the term "tieback" as "a decorative strip or device of cloth, cord, or metal for draping a curtain to the side of a window."

The subject tiebacks are made of woven fabric and clearly not metal nor plaited (and do not have tassels) like cord tiebacks. Rather, the curtain tiebacks at issue are the same as the curtain loops referenced in the EN to heading 6304. Each of the instant tiebacks is a strip of material made of woven fabric, which forms a loop when fastened together by hook and loop tapes sewn to the ends. The resulting loop then functions to hold curtains in place like a "curtain loop." Accordingly, the subject tiebacks are a textile furnishing within the scope of heading 6304, HTSUSA, as supported in the EN. Moreover, Customs has consistently ruled that curtain tiebacks like the subject tiebacks (a fabric strip with hook and loop closures at each end) are the type classifiable under heading 6304, HTSUSA. See Headquarters Ruling Letter (HQ) 083275, dated December 12, 1989; HQ 084889, dated February 21, 1990; HQ 084893, dated April 4, 1990; HQ 084900, dated June 4, 1990; and HQ 085050, dated June 4, 1990.

Heading 6307, HTSUSA, provides for other made up articles of textile materials. The EN to heading 6307 state that the heading covers made up articles of any textile material which are not included more specifically elsewhere in the tariff schedule. The items under consideration are more specifically provided for elsewhere in heading 6304, HTSUSA, and therefore are not properly classifiable under heading 6307, HTSUSA.

As the subject curtain tiebacks are made entirely of polyester, they are classifiable under subheading 6304.93.0000, HTSUSA, which provides for other furnishing articles, excluding those of heading 9404, not knitted or crocheted, of synthetic fibers.

Holding:

Based on the foregoing, the subject merchandise is classified in subheading 6304.93.0000, HTSUSA, which provides for other furnishings articles, excluding those of heading 9404: other: not knitted or crocheted, of synthetic fibers. The applicable rate of duty is 9.7 percent ad valorem and the textile restraint category is 666.

In accordance with 19 C.F.R. §177.9(d), NYRL H81076 is revoked.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, *The Status on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importing the merchandise to determine the current applicability of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO CLASSIFICATION OF MACKEREL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letters and treatment relating to the classification of mackerel.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two ruling letters pertaining to the tariff classification of mackerel and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before November 16, 2001.

ADDRESS: Written comments are to be addressed to: U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–927–1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises in-

terested parties that Customs intends to revoke two ruling letters pertaining to the tariff classification of mackerel. Although in this notice Customs is specifically referring to two rulings, DD801926, dated September 28, 1994 and PD A83430, dated July 1, 1996, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In DD801926, dated September 28, 1994, the classification of a product commonly referred to as canned jack mackerel was determined to be in subheading 1604.15.0000, HTSUS, which provides for prepared or preserved fish * * * whole or in pieces, but not minced, mackerel. This ruling letter is set forth in Attachment "A" to this document. In PD A83430, dated July 1, 1996, the classification of a product commonly referred to as horse mackerel was also determined to be in subheading 1604.15.0000, HTSUS. This ruling letter is set forth in Attachment "B" to this document. Since the issuance of these rulings, Customs has had a chance to review the classification of this merchandise and has determined that the classification set forth in the two rulings is in error. The correct classification of the canned jack mackerel is in subheading 1604,19.2000, HTSUS, which provides for other fish * * * in airtight containers * * * not in oil * * * other. While we have been advised the horse mackerel was cooked to 100 degrees centigrade, we need additional information to properly classify this product. Should the importer desire a new binding ruling on this product, a ruling request containing all relevant facts may be submitted.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke DD 801926, and PD A83430 and any other ruling not specifically identified

to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQ) 965059 and 965056 (*see* Attachments "C" and "D" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 28, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Jamaica, NY, September 28, 1994.

CLA–2–16:K:C:A3:E04 801926
Category: Classification
Tariff No. 1604.15.0000

MS. MARY JO MUOIO
BARTHCO INTERNATIONAL, INC.
90 West Street
New York, NY 10006

Re: The tariff classification of canned mackerel from Chile.

DEAR MS. MUOIO:

In your letter dated September 7, 1994, you requested a tariff classification ruling on canned mackerel, on behalf of Berns & Kopstein, 17 Battery Place, New York, NY 10004.

The product is jack mackerel, packed in brine, and marketed in 15 ounce cans.

The applicable subheading for this product will be 1604.15.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for prepared or preserved fish * * * whole or in pieces, but not minced: mackerel. The rate of duty will be 6% ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

THOMAS MATTINA,
Area Director,
JFK Airport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Champlain, NY, July 1, 1996.

CLA-2:16:S:N:N:E01
Category: Classification
Tariff No. 1604.15.0000

MR. JERRY BARILE
IMPORT OPERATIONS MANAGER
ALL NATIONS FORWARDING IMPORT CO. INC.
One Cross Island Plaza
Jamaica, NY 11422

Re: The tariff classification cooked, dried mackerel from Japan.

DEAR MR. BARILE:

In your letter dated May 7, 1996 and follow-up information furnished on July 1, 1996 you requested a tariff classification ruling in behalf of your client Majestic Nagano of Ft. Lee, New Jersey. The product to be classified was described a Dried Horse Mackerel from Japan. The mackerel "trachurus japonicus" is cooked by boiling in hot water to 100 degrees centigrade and then dried with hot air. The mackerel is then retail packaged in a cellophane bag.

The applicable subheading for the Horse Mackerel is 1604.15.0000 which provides for prepared or preserved fish * * * whole or in pieces, but not minced, mackerel. The general rate of duty will be 4.8 percent ad valorem.

Importations of this product is subject to import regulations administered by another agency. Information regarding applicable regulations administered by the U.S. Food and Drug Administration may be addressed to that agency at the following location:

U.S. Food and Drug Administration
Division of Regulatory Guidance HFF314
200 C Street, SW.
Washington, D.C. 20204

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. This ruling letter is binding only to the party to whom it is issued and may be relied on only by that party.

DAVID BALLARD,
Port Director,
Champlain, NY.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965059ptl
Category: Classification
Tariff No. 1604.19.2000

MS. MARY JO MUOIO
BARTHCO INTERNATIONAL
90 West Street
New York, NY 10006

Re: Canned Mackerel, DD 801926 revoked.

DEAR MS. MUOIO:

In DD 801926, issued to you on behalf of Berns & Kopstein, by the Area Director of Customs, JFK Airport, on September 28, 1994, a product identified as canned mackerel was

classified under subheading 1604.15.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for prepared or preserved fish * * * whole or in pieces, but not minced: mackerel.

We have reviewed that ruling and determined that the classification set forth is incorrect. The correct classification of the canned mackerel is in subheading 1604.19.2000, HTSUS, which provides for other fish of the heading (including yellowtail): * * * in airtight containers * * * not in oil * * * other, pursuant to the analysis set forth below.

Facts:

The product is described as jack mackerel, packed in brine, marketed in 15 ounce cans.

Issue:

What is the classification of canned jack mackerel?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

1604	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs:
	Fish, whole or in pieces, but not minced:
1604.15	Mackerel
1604.19	Other (including yellowtail):
	In airtight containers:
	Not in oil:
1604.19.2000	Other

DD 801926 classified canned jack mackerel in subheading 1604.15.0000, HTSUS. While there are no section or chapter notes relevant to the classification of this product in this subheading, Subheading Note 2 in Chapter 16 bears directly on fish classified by common name in heading 1604. This note provides: "2. The fish and crustaceans specified in the subheadings of heading 16.04 and 16.05 under their common names only, are of the same species as those mentioned in Chapter 3 under the same name."

In Chapter 3, mackerel are provided for in two subheadings which identify the common name, "Mackerel," with the scientific species included within that common name. The two subheadings (0302.64 and 0303.74, HTSUS) are identical and read as follows:

0302.64.0000	Mackerel (*Scomber scombrus, Scomber australasicus, Scomber japonicus*)

Therefore, for tariff purposes, the term "Mackerel" includes only the three species of the genus Scomber which are listed in the referenced subheadings.

DD 801926 describes the product which is the subject of the ruling as "jack mackerel". The *Multilingual Dictionary of Fish and Fish Products*, 2nd ed. (London & Tonbridge, The Whitefriars Press, Ltd. 1978) describes this fish on page 141 as follows:

"*489 JACK MACKEREL*

(a) Other name used for HORSE MACKEREL (*Trachurus* and *Decapterus* spp.) which belong to the family *Carangidae*.

(b) In North America also more generally employed for this family, especially *Caranx* spp. (see +Jack).

(c) In Australia and New Zealand refers to *Trachurus declivis*."

On page 165 of the dictionary, the term "Mackerel" is described as in the HTSUS, however, Scally Mackerel, a fish found near Australia is added.

"577 *MACKEREL*

Scomber spp. and/or *Pneumatophorus* spp.

(a) Mackerel (Atlantic)	*Scomber scombrus*
(b) Chub Mackerel or pacific mackerel	*Scomber japonicus*
(c) Blue Mackerel (New Zealand)	*Scomber australasicus*
(d) Scally Mackerel (Australia)	*Ambylgaster postera*"

Based on the foregoing, Jack Mackerel is not any of the three species of the genus *Scomber* which are designated as "Mackerel" in the HTSUS subheadings 0302.64.00 and 0303.74.00. Accordingly, by application of Subheading Note 2 to Chapter 16, fish which are designated Jack Mackerel are not Mackerel as provided for in subheading 1604.15.00, HTSUS.

Holding:

Jack Mackerel, packed in brine, in cans, is a prepared or preserved fish product classified in heading 1604, HTSUS, as Fish, whole or in pieces, but not minced. Since Jack Mackerel is not provided for by name in this subheading, it will be classified in the residual subheading 1604.19.2000, HTSUS, as Other fish of this heading (including yellowtail): * * * In airtight containers: * * * Not in oil: * * * Other.

DD 801926, dated September 28, 1994, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965056ptl
Category: Classification
Tariff No.

MR. JERRY BARILE
IMPORT OPERATIONS MANAGER
ALL NATIONS FORWARDING IMPORT C., INC.
One Cross Island Plaza
Jamaica, NY 11422

Re: Dried Mackerel, PD A83430 revoked.

DEAR MR. BARILE:

In PD A83430, issued to you on behalf of Majestic Nagano, by the Port Director of Customs, Champlain, NY, on July 1, 1996, a product identified as dried horse mackerel was classified under subheading 1604.15.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for prepared or preserved fish * * * whole or in pieces, but not minced: Mackerel.

We have reviewed that ruling and determined that the classification set forth is incorrect. However, because we do not have complete information regarding the duration and purpose of the cooking the fish undergoes, we are unable to provide the correct classification of the horse mackerel. The analysis set forth below provides our reasons for determining PD A83430 is in error. Should the importer desire a ruling on this product a new request containing all relevant facts about the product may be submitted.

Facts:

The product is described as dried horse mackerel, *trachurus japonicus*, which is cooked by boiling in hot water to 100 degrees centigrade and then dried with hot air. The product is then packaged in a cellophane bag.

Issue:

What is the classification of cooked, dried horse mackerel?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

1604	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs:
	Fish, whole or in pieces, but not minced:
1604.15	Mackerel
1604.19	Other (including yellowtail):
	In airtight containers:
	Not in oil:
	Other
	Other
1604.19.80	Other
1604.20	Other prepared or preserved fish:

PD A83430 classified a product identified as "horse mackerel" in subheading 1604.15.0000, HTSUS. While there are no section or chapter notes relevant to the classification of this product in this subheading, Subheading Note 2 in Chapter 16 bears directly on fish classified by common name in heading 1604. This note provides: "2. The fish and crustaceans specified in the subheadings of heading 16.04 and 16.05 under their common names only, are of the same species as those mentioned in Chapter 3 under the same name."

In Chapter 3, mackerel are provided for in two subheadings which identify the common name, "Mackerel," with the scientific species included within that common name. The two subheadings (0302.64 and 0303.74, HTSUS) are identical and read as follows:

0302.64.0000	Mackerel (*Scomber scombrus*, *Scomber australasicus*, *Scomber japonicus*)

Therefore, for tariff purposes, the term "Mackerel" includes only the three species of the genus Scomber which are listed in the referenced subheadings.

PD A83430 describes the product which is the subject of the ruling as "horse mackerel". The *Multilingual Dictionary of Fish and Fish Products*, 2nd ed. (London & Tonbridge, The Whitefriars Press, Ltd. 1978) describes this fish on page 141 as follows:

"*489 JACK MACKEREL*

(a) Other name used for HORSE MACKEREL (*Trachurus* and *Decapterus* spp.) which belong to the family *Carangidae*.

(b) In North America also more generally employed for this family, especially *Caranx* spp. (see +Jack).

(c) In Australia and New Zealand refers to *Trachurus declivis*."

On page 165 of the dictionary, the term "Mackerel" is described as in the HTSUS, however, Scally Mackerel, a fish found near Australia is added.

"*577 MACKEREL*

Scomber spp. and/or *Pneumatophorus* spp.

(a) Mackerel (Atlantic)	*Scomber scombrus*
(b) Chub Mackerel or pacific mackerel	*Scomber japonicus*
(c) Blue Mackerel (New Zealand)	*Scomber australasicus*
(d) Scally Mackerel (Australia)	*Ambylgaster postera*"

Based on the foregoing, Horse Mackerel is not any of the three species of the genus *Scomber* which are designated as "Mackerel" in the HTSUS subheadings 0302.64.00 and

0303.74.00. Accordingly, by application of Subheading Note 2 to Chapter 16, fish which are designated Horse Mackerel are not Mackerel as provided for in subheading 1604.15.00, HTSUS.

Holding:

Horse Mackerel, cooked in boiling water to 100 degrees centigrade and then dried with hot air may be a prepared or preserved fish product classified in heading 1604, HTSUS. However, without further information regarding the duration or purpose of the cooking, we are unable to provide a specific classification. Should the importer desire a new binding ruling on this product, a ruling request containing all relevant facts may be submitted.

PD A83430, dated July 1, 1996, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF KEYBOARDS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of ruling letter and treatment relating to tariff classification of keyboards.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of keyboards under the Harmonized Tariff Schedule of the United States ("HTSUS"). No change was proposed with respect to the actual classification of the merchandise. Change was proposed only with respect to Customs interpretation of Note 5 to Chapter 84, HTSUS. Notice of the proposed action was published in the CUSTOMS BULLETIN on August 22, 2001. The only comment received in response to the notice is discussed in the attached ruling.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927–2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended,

and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on August 22, 2001, proposing to modify HQ 961259, dated December 8, 1998, a ruling letter pertaining to the tariff classification of keyboards. The only comment received in response to the notice is discussed in the attached ruling HQ 963280.

As stated in the proposed notice, this revocation will cover any rulings on the pertinent issue which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Customs modification herein relates only to the extent that certain language in HQ 961259 dated December 8, 1998, no longer reflects Cus-

toms view of Note 5 to Chapter 84, HTSUS. There is no change in the classification determinations of HQ 961259.

Dated: September 26, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, September 26, 2001.

CLA–2 RR:CR:GC 963280 GOB
Category: Classification
Tariff No. 8471.60.20, 8537.10.90,
8538.90.80, 8485.90.00, and 8548.90.00

CAROLYN D. AMADON
ROBERT E. BURKE
BARNES, RICHARDSON & COLBURN
303 East Wacker Drive
Suite 1100
Chicago, IL 60601

Re: Keyboards; Keytops; HQ 961259 modified.

DEAR MS. AMADON AND MR. BURKE:

This letter is with respect to your letter of November 22, 1999, on behalf of Preh Electronics, Inc. ("Preh"), concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of keyboards, keypads, and parts thereof. You made an additional submission dated August 29, 2000.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 961973, as described below, was published in the CUSTOMS BULLETIN on August 22, 2001.

The only comment received in response to the notice was the comment you submitted by letter of September 21, 2001, on behalf of Preh. Your comment and our reply are discussed in the LAW AND ANALYSIS section of this ruling.

Facts:

In your submission of November 22, 1999, you "request a ruling on products similar to that covered by HQ 961259 (December 8, 1998) which modified HQ 957491 (July 31, 1996). While HQ 961259 addressed one representative model of keyboard, the PC-POS, we believe the principles involved apply to all of Preh's imported products that have the same characteristics as the Preh PC-POS."

In HQ 961259, we held that the PC-POS keyboard with a magnetic stripe reader (MSR) is classified under subheading 8471.92.20, HTSUS (1994 "HTSUS") and 8471.60.20, HTSUS (1998 HTSUS), as a keyboard.

The merchandise at issue in HQ 961259 was described as follows in that ruling:

> The PC-POS keyboard with MSR * * * is a QWERTY-style keyboard with housing and interface electronics containing a slot for the MSR. It also consists of additional "rows and columns" keys which may be programmed to accommodate a customer's unique specifications, such as POS applications * * * the keyboard is specifically designed for

use with IBM or IBM-compatible PCs. The keyboard also includes an additional "wedge," which extends the flexibility of both the keyboard and a PC using the keyboard to various other external applications, such as laser scanners.

In your November 22, 1999 submission, you describe the goods at issue in this request as follows:

> The first category of merchandise described herein includes Preh's MC and WX series completed keyboards * * * They are either "rows and columns" keyboards or, in some cases, "QWERTY-style" keyboards containing 84 or 128 keys, and like the Preh PC-POS keyboard that was the subject of HQ 961259 (December 8, 1998), both the MC and WX series are imported with housings and interface electronics. They are configured for data entry functions, and have applications in commercial office and POS settings. Like the Preh PC-POS, the MC and WX series cannot be operated unless connected to a CPU through the interface. In addition, they send and receive data from the ADP system, and are used with an ADP system in the same manner as the Preh PC-POS keyboard.
>
> Preh's second category of merchandise in question includes three types of unfinished computer keyboards [footnote omitted]: (1) "rows and columns" keypads, including the NW and the MTF series; (2) QWERTY-style reconfigurable keypads, including the AK series; and, (3) customized keypads and keyboards, in which the size, shape and layout are specified by Preh's customers. The bare keyboards and keypads are not imported with housings or interface electronics. However, they have the same basic design and function as the Preh PC-POS Keyboard with MSR that was described in HQ 961259, dated December 8, 1998. First, the keys consist of three-fourths inch keyspacing, which is consistent with the standard spacing of all computer keyboards. Second, they have identical actuation mechanisms. Third, the bare keyboards and keypads cannot be operated unless they are connected to a CPU through an interface. Fourth, after being equipped with interface electronics, the keyboards and keypads are able to send and receive data from the ADP system. Thus, once they are equipped with interface electronics, Preh's bare keyboards and keypads are used with an ADP system in the same manner as the Preh PC-POS keyboard that was the subject of HQ 961259.
>
> With respect to parts and accessories, the final category of merchandise described herein, Preh separately imports keytops for use with its keyboards. They are both printed and unprinted, and are interchangeable. They are specifically designed for use with the keyboards described herein.

You refer to the first category of merchandise, described above, as the Preh MC and WX series of completed keyboards. You break down the second category of merchandise, described above, into the following four groups: sample A1: rows and columns keyboards; sample A2: QWERTY-style keypad; sample A3: customized keyboards; and keytops separately imported by Preh.

Issue:

What is the tariff classification of the subject merchandise?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof * * *:
8471.60	Input or output units, whether or not containing storage units in the same housing:
	Other:
8471.60.20	Keyboards

* * * * * * *	
8537	Boards, panels, consoles, desks, cabinets, and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other
* * * * * * *	
8538	Parts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537:
8538.90	Other:
	Other:
8538.90.80	Other
* * * * * * *	
8485	Machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, and not specified or included elsewhere in this chapter:
8485.90.00	Other
* * * * * * *	
8548	* * * electrical parts of machinery or apparatus, not specified or included elsewhere in this chapter:
8548.90.00	Other
* * * * * * *	

You claim that the goods at issue here are classifiable under heading 8471, HTSUS. Heading 8471, HTSUS, is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides, in relevant part:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.
>
> * * * * * * *
>
> (D) Printers, keyboards, X-Y coordinate input devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading 8471.
>
> (E) Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.

The General EN to Chapter 84, HTSUS, provides in pertinent part ((E) (1)) as follows:

> A machine incorporating an automatic data processing machine and performing a specific function other than data processing is classifiable in the heading corresponding to the function of that machine or, in the absence of a specific heading, in a residual heading, and not in heading 84.71.

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

> Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:
>
> (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine

> of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate
> * * *
>
> (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate, or failing that, in heading 8485 or 8548.

Preh MC and WX Series Completed Keyboards

In your August 29, 2000 submission you excerpt the following language from HQ 961259:

> The test for meeting the terms of note (D) should be what is specifically required in note (D). If certain devices satisfy the conditions of chapter 84, notes 5(B)(b) and (c), HTSUS, they are to be classified as units of heading 8471, HTSUS.

We are no longer of that opinion as expressed in HQ 961259. Note 5(D) to Chapter 84, HTSUS, is subject to Note 5(E). Accordingly, if a machine performs a specific function other than data processing and incorporates or works in conjunction with an automatic data processing machine, it is to be classified in the heading corresponding to the function of the machine, and not in heading 8471, HTSUS.

In HQ 957491, which was modified by HQ 961259 only as to the classification of the PC-POS, we stated:

> Thus, while note 5(D) negates the sole or principal use requirement when considering the classification of printers, keyboards, X-Y coordinate input devices and disk storage units, note 5(E) provides a separate prerequisite to the classification of **any** ADP machine and, therefore, ADP unit. To be classified as an ADP unit, a device must be used with a machine that is considered, for classification purposes, an ADP machine. *See* chapter 84, note 5(A), HTSUS (1994/1996) (defining "automatic data processing machines" for purposes of heading 8471, HTSUS).

In HQ 960081 dated February 12, 2001, we determined that a 3M Scotchprint Printer is classified in subheading 8443.59.50, HTSUS, based upon Note 5(E) to Chapter 84.

In HSC 25 in March 2000 (Annex H/6 to Doc. NC0250E2), the Harmonized System Committee ("HSC") of the World Customs Organization ("WCO") confirmed the classification of the "Iris 3047" ink-jet printer in heading 8443 and subheading 8443.51, rather than in heading 8471, by application of GRI 1 (Notes 5(B), 5(D) and 5(E) to Chapter 84). In essence, the HSC determined that the goods of Note 5 (D) to Chapter 84 are units of automatic data processing and therefore are subject to Note 5(E) of Chapter 84. See Note 5 (B) which contains the language "Subject to paragraph (E) below * * *" and Note 5 (D) which pertains to "* * * satisfy[ing] the conditions of paragraphs (B)(b) and (B)(c) * * *" As stated above, Note 5 (E) provides:

> Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.

Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision in HQ 960081 and here.

The Preh MC and WX series of completed keyboards are either "rows and columns" keyboards, or, in some cases, "QWERTY"—style keyboards which contain 84 or 128 keys. They are both imported with housings and all of the interface electronics. They are configured for data entry functions, and have applications in commercial office and POS settings. They are designed for connections to IBM-PC compatible types of computers, and are compatible with all common operating systems.

We find that the Preh MC and WX series of completed keyboards are described in heading 8471, HTSUS. They are not excluded from heading 8471 by Note 5(E) as they perform no function other than data processing. They are classified in subheading 8471.60.20, HTSUS, as: "Automatic data processing machines and units thereof * * * : * * * Input or output units, whether or not containing storage units in the same housing: Other: Keyboards."

In your comment, you state that you agree with classification of these keyboards in subheading 8471.60.20, HTSUS. You further state that you disagree with Customs position that Note 5(D) to Chapter 84, HTSUS, is subject to Note 5(E). We believe there is clear and substantial basis for our position, as outlined above.

Rows and Columns Keyboards (sample A1), QWERTY-style Keypads (sample A2), and Customized Keyboards (sample A3)

In your comment, you state that Preh disagrees with the classification of its other keyboard and keypad models (samples A1, A2, and A3). It states that these devices are designed for and can only be used with a personal computer; by their nature they serve only one purpose—to facilitate the sending of a signal to the CPU.

The rows and columns keyboards (sample A1), QWERTY-style keypads (sample A2), and customized keyboards (sample A3) are imported without their housings and interface electronics. They do not have the ability to accept or deliver data in a form (codes or signals) which can be used by an ADP system. See Legal Note 5(B)(c) to Chapter 84, HTSUS. There is no documentary evidence as to the principal function of these goods. Accordingly, we find that classification of these goods in heading 8471, HTSUS, is precluded. We find that they are described in heading 8537, HTSUS, and therefore classified in subheading 8537.10.90, HTSUS, as: "Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * * * : For a voltage not exceeding 1,000 V: * * * Other."

Keytops Separately Imported by Preh

Printed keytops are classified in subheading 8538.90.80, HTSUS, as: "Parts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537: * * * Other: * * * Other: * * * Other."

Unprinted keytops cannot be classified pursuant to Legal Note 2 (b) to Section XVI, HTSUS, because satisfactory evidence has not been provided that the unprinted keytops are suitable for use solely or principally with a particular kind of machine, as required by that Note. Note 2(c) to Section XVI provides: "All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8485 or 8548." Pursuant to Note 2(c) to Section XVI, the unprinted or interchangeable keytops which do not contain electrical connectors are classified in subheading 8485.90.00, HTSUS, as: "Machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, and not specified or included elsewhere in this chapter: * * * Other." If there are keytops which include electrical connectors, they are classified in subheading 8548.90.00, HTSUS, as "* * * electrical parts of machinery or apparatus, not specified or included elsewhere in this chapter: * * * Other."

1994 HTSUS

HQ 961259 also dealt in part with the 1994 HTSUS. Note 5 of Chapter 84, HTSUS (1994), provided in pertinent part as follows:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).
>
> Both units entered separately are also to be classified in heading 8471.
>
> Heading 8471 does not cover machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function. Such machines are classified in the headings appropriate to their respective functions or, failing that, in residual headings.

We find that there would be no different result under the 1994 HTSUS from the above findings stated above for the 2001 HTSUS.

HQ 961259

HQ 961259 provided in pertinent part as follows:

> The test for meeting the terms of note (D) should be what is specifically required in note (D). If certain devices satisfy the conditions of chapter 84, notes 5(B)(b) and (c), HTSUS, they are to be classified as units of heading 8471, HTSUS. As we have previously stated, the subject keyboard is connectable to a CPU and it is able to accept or deliver data in a form which can be used by an ADP machine, thereby satisfying the terms of chapter 84, notes 5(B)(b) and (c), and note 5(D), HTSUS.
>
> We will confine the application of chapter 84, note 5(E), HTSUS, to the subject merchandise. Based upon the information provided, and contrary to the holding in HQ

957491, the subject keyboard performs a data processing function, as its intended use is to input data. In fact, it is our understanding that a keyboard user can manually input the data from a credit card or other card into the PC by punching the keys of the keyboard rather than sliding the card through the MSR. Therefore, the MSR does not necessarily have to be utilized. Consequently, because the purpose of the keyboard is for data input, it is now our position that chapter 84, note 5(E), HTSUS, does not preclude classification of the keyboard in heading 8471, HTSUS. We also note that, as previously stated, MSRs themselves are classifiable in heading 8471, HTSUS.

This language in HQ 961259 no longer reflects our view of Note 5 to Chapter 84, HTSUS. Our view is reflected in the language of HQ 957491 (more fully excerpted above), where we stated that "* * * note 5(E) provides a separate prerequisite for the classification of **any** ADP machine and, therefore, ADP unit." [Emphasis in original.] Our view is also reflected in the classification opinion with respect to the "Iris 3047" ink-jet printer, described above.

Holdings:

The Preh MC and WX series completed keyboards are classified in subheading 8471.60.20, HTSUS, as: "Automatic data processing machines and units thereof * * * : * * * Input or output units, whether or not containing storage units in the same housing: Other: Keyboards."

The rows and columns keyboards (sample A1), QWERTY-style Keypads (sample A2), and customized keyboards (sample A3) are classified in subheading 8537.10.90, HTSUS, as: "Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity * * * : For a voltage not exceeding 1,000 V: * * * Other."

The printed keytops separately imported by Preh are classified in subheading 8538.90.80, HTSUS, as: "Parts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537: * * * Other: * * * Other: * * * Other."

The unprinted or interchangeable keytops which do not contain electrical connectors are classified in subheading 8485.90.00, HTSUS, as: "Machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, and not specified or included elsewhere in this chapter: * * * Other."

If there are unprinted or interchangeable keytops which include electrical connectors, they are classified in subheading 8548.90.00, HTSUS, as "* * * electrical parts of machinery or apparatus, not specified or included elsewhere in this chapter: * * * Other."

Effect on Other Rulings:

HQ 961259 is modified to the extent described above, i.e., the language in HQ 961259 no longer reflects our view of Note 5 to Chapter 84, HTSUS. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF KNEE BRACES AND SUPPORTS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation and modification of five tariff classification ruling letters and treatment relating to the classification of knee braces and knee supports.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify HQ 086667, dated May 9, 1990; NY D88848, dated April 1, 1999; NY 862972, dated May 31, 1991; and to revoke HQ 087552, dated October 1, 1990; and NY A89561, December 11, 1996, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of knee braces and knee supports. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before November 16, 2001.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Textiles Branch: (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as

amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify three rulings and revoke two rulings relating to the tariff classification of knee braces and supports. Although in this notice Customs is specifically referring to the modification of HQ 086667, dated May 9, 1990 (Attachment A); NY D88848, dated April 1, 1999 (Attachment B); NY 862972, dated May 31, 1991 (Attachment C); and the revocation of HQ 087552, dated October 1, 1990 (Attachment D) and NY A89561, dated December 11, 1996 (Attachment E), relating to the tariff classification of knee braces and knee supports under the Harmonized Tariff Schedule, this notice covers any rulings on this merchandise which may exist but have not been specifically identified that are contrary to the position set forth in this notice. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice that is contrary to the position set forth in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Customs previously classified a hinged knee support, a neoprene knee support and a knee brace under subheading 6212.90.0030, HTSUSA, which provides for brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: other, of man-made fibers or man-made fibers and rubber or plastics. Customs also classified an ankle brace, a knee brace and knee immobilizer under subheading 9021.19.8500, HTSUSA, which provides artificial joints and other orthopedic or fracture appliances; parts and

accessories thereof * * * other. Based on our analysis of the scope of the terms of the heading in 9021, HTSUSA, 6307, HTSUSA, and 6212, HTSUSA, the Legal Notes, and the Explanatory Notes, the knee braces and supports of the type discussed herein, are classifiable in subheading 6307.90.9989, HTSUSA, which provides for "Other made up articles, including dress patterns: Other; Other: Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify HQ 086667, dated May 9, 1990 by the issuance of HQ 965235 (Attachment F); NY D88848, dated April 1, 1999 by the issuance of HQ 965237 (Attachment G); NY 862972, dated May 31, 1991 by the issuance of HQ 965234 (Attachment H); and to revoke HQ 087552, dated October 1, 1990 by the issuance of HQ 965236 (Attachment I), and NY A89561, dated December 11, 1996 by the issuance of HQ 965238 (Attachment J) and any other ruling not specifically identified, that is contrary to the position set forth in this notice, to reflect the proper classification of the merchandise pursuant to the analysis set forth in the proposed foregoing identified rulings. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the position set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 2, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 9, 1990.

CLA-2: CO:R:C:G 086667 DRR 841837
Category: Classification
Tariff No. 6212.90.0030

MR. STANLEY DREIER
THE DREIER COMPANY
375 Turnpike Road
East Brunswick, NJ 08816

Re: Modification of New York ruling letter (NYRL) 842012, dated June 28, 1989

DEAR MR. DREIER:

This is in response to your letter of March 8, 1990, in which you requested reconsideration of a ruling letter issued by our New York office on June 28, 1989. That ruling, NYRL 841837, in response to your request of May 30, 1989, classified a knee and thigh support and a waist/back support from Taiwan under subheading 6117.80.0030, HTSUSA, as other made up clothing accessories, knitted or crocheted, * * * parts of garments or of cloth-

ing accessories, other accessories, of man-made fibers, with a duty rate of 15.5 percent ad valorem and subject to textile category 659. We have had occasion to review that decision and have found it to be in error.

Facts:

The merchandise is represented by a sample of a knee support constructed of neoprene rubber laminated on both the inner and outer surfaces with knit nylon fabric. It is designed with an opening at the knee for patella support. The second sample is a back/waist support, constructed of neoprene rubber laminated on the outer surface with knit nylon fabric. It has a hook and loop fastener along the edge to adjust and secure the support.

Issue:

Whether the articles at issue are classifiable under subheading 6117.80.0030, HTSUSA, subheading 6212.90.0030, HTSUSA, or subheading 9021.19.8000, HTSUSA.

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 provides that classification shall be according to the terms of the headings and any relative section or chapter notes. Heading 6117 provides for other made up clothing accessories, knitted or crocheted, knitted or crocheted parts of garments or of clothing accessories. Heading 6212 provides for brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether of not knitted or crocheted. Heading 9021 provides for, among other things, orthopedic appliances.

The articles at issue do not appear to be designed, marketed or used as clothing accessories and are therefore not appropriately classified as such under heading 6117. Headquarters Ruling Letter (HRL) 086378, dated April 9, 1990, classified tubular shaped articles made of angora, lambswool, polyamid and elastan under subheading 6117.80.0020, HTSUSA. However, those items, designed principally for warmth, rather than support, are distinguishable from the items under consideration in this ruling request.

The Explanatory Notes to the Harmonized System may be consulted for guidance as to the correct international interpretation of the various HTSUSA provisions. The Explanatory Notes to heading 9021 state that it covers orthopedic appliances including medical and surgical corsets and belts characterized by: (a) special pads, springs, etc., adjustable to fit the patient; (b) the material of which they are made (leather, metal, plastics, etc.); (c) or the presence of reinforced parts, rigid pieces of fabric or bands or various widths. These appliances are for preventing or correcting bodily deformities or supporting or holding organs following an illness or operation. The Explanatory Notes also state that the special design of these articles for a particular orthopedic purpose distinguishes them from ordinary corsets and belts, whether or not the latter also serve to support or hold. The articles is question do not have the special features set forth as the specific criteria in the Explanatory Notes to heading 9021 and are therefore not properly classifiable under heading 9021.The Explanatory Notes to heading 6212 state that that heading covers articles designed for wear as body-supporting garments, including suspensory bandages, braces, and body belts, other than orthopedic appliances. The Explanatory Notes do not restrict the heading to items which cover the torso. The articles in question are properly classifiable under heading 6212.

Holding:

The neoprene knee support and the neoprene waist/back support are classified under subheading 6212.90.0030, HTSUSA, and are subject to textile category 659.

Pursuant to section 177.9, Customs Regulations (19 C.F.R. 177.9), NYRL 841837, dated June 28, 1989, is modified in conformity with the foregoing. This notice is not to be applied retroactively to NYRL 841837 (19 C.F.R. §177.9(d)(2) (1989)) and will not, therefore, affect the transaction for the importation of your merchandise under that ruling. However, for the purposes of future transactions in merchandise of this type, NYRL 841837 will not be valid precedent. We recognize that pending transactions may be adversely affected by this revocation, in that current contracts for importation arriving at a port subsequent to the release of HRL 086667 will be classified under the new ruling. If such a situation arises,

you may, at your discretion, notify this office and apply for relief from the binding effects of the new ruling as may be dictated by the circumstances.

GERALD LADERBERG,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, April 1, 1999.

CLA-2-63:RR:NC:TA:352 D88848
Category: Classification
Tariff No. 6307.90.9989 and 9021.19.8500

MS. DEBORAH SCOTT
MODAWEST INTERNATIONAL, INC.
5246 W. 111th St.
Los Angeles, CA 90045

Re: The tariff classification of ankle supports, a knee brace, a knee immobilizer and a thigh support from Taiwan.

DEAR MS. SCOTT:

In your letter dated October 26, 1998, on behalf of Lantic USA, Santa Monica, California, you requested a tariff classification ruling.

The following samples were submitted:

1. Ankle supports, item numbers N-AN-04 and N-AN-06. They are made of neoprene rubber laminated on both inner and outer surfaces with nylon knit fabric. They are tubular shaped with open ends and an opening at the heel. The different item numbers represent medium and small sizes.

2. A knee brace, item number N-KN-56, constructed of neoprene rubber laminated on both the inner and outer surface with nylon knit fabric. It is designed with opening at the knee for patella support. It has two straps which fasten around the knee joint by means of strips similar to the VELCRO brand loop fastener. There are two sleeves, one on each side of the brace, containing a plastic hinged bar to give added stability and support.

3. A knee immobilizer, item number T-KN-73, made of foam rubber laminated on the outer surface with brush knit fabric and the inner surface with a knit fabric. The interior side, features a thick foam cushion in the center and foam strips, one on each side. It is held closed with a removable panel made of the same material, one on each exterior side. The panels feature a sleeve with metal stay and strips similar the VELCRO brand fastener. It is designed to wrap around the knee.

4. A thigh support, item number N-TH-01, constructed of a tubular shaped neoprene rubber laminated on both inner and outer surface with nylon knit fabric. The article is opened at each end.

Regarding items N-KN-56 and T-KN-73, the advertising on one of the packages indicates that it is worn only during sporting events by players to provide some support and thus reduce the probability of re-injuring the knee joint. Although the articles of Harmonized Tariff Schedule of the United States (HTS) Chapter 95, including sporting goods, are excluded from Chapter 90 by its note 1 (k), NYRL A89561 has ruled that, for similar goods, that exclusion applies only to the items essentially similar to those specifically cited as examples in Explanatory Note B (13) to 9506, i.e., those which primarily serve to absorb the impact of blows, collisions or flying objects. Since that description does not apply here, they are both classified in heading 9021, HTS.

The applicable subheading for item numbers N-AN-04, N-AN-06 and N-TH-01 will be 6307.90.9989, HTS, which provides for other made up articles * * * Other. The rate of duty will be 7 percent ad valorem.

The applicable subheading for item numbers N-KN-56 and T-KN-73 will be 9021.19.8500, HTS, which provides for inter alia, othopedic appliances including crutches, surgical belts and trusses. The rate of duty is free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alan Tytelman at 212–637–7092.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 31, 1991.

CLA62:S:N:N:3H–354 862972
Category: Classification
Tariff No. 6212.90.0030, 9506.99.6080 and 9506.99.2000

MR. JAMES P. SULLIVAN
SULLIVAN & LYNCH, P.C.
156 State Street
Boston, MA 02109

Re: The tariff classification of neoprene and nylon supports from Korea.

DEAR MR. SULLIVAN:

In your letter dated April 26, 1991, on behalf of your client Sports Products Marketing, Inc., you requested a classification ruling for certain Hummel Protect Support Products.

You have submitted five samples. The elbow support de luxe, sample C, is made of 90 percent neoprene rubber and 10 percent nylon. It is said to be used to protect the muscles, tendons and ligaments around the elbow. Specially designed for indoor sports, the elbow support has a circular impact absorbing foam pad approximately 8 millimeters thick.

The shin protector, sample E, is made of 90 percent neoprene rubber and 10 percent nylon. The guard measures about 36 centimeters in length and contains shock absorbing foam strips roughly 12 millimeters thick. It is said to be specially designed for use in the play of soccer.

You contend that the Hummel Protect Support products are properly classifiable as sports equipment in heading 9506, Harmonized Tariff Schedules of the United States (HTS), given that the components serve as protective equipment for sports and are similar to certain protection devices enumerated in the Explanatory Notes to heading 95.06, HTS.

Heading 9506, HTS, provides for, inter alia, articles and equipment for gymnastics, athletics, other sports and outdoor games. The Explanatory Notes (EN), which although not legally binding, constitute the official interpretation of the Harmonized System at the international level, provide at EN 95.06(B) (13) that Chapter 95 includes protective equipment for sports or games such as fencing masks and breast plates, elbow and knee pads, cricket pads and shin guards.

The sports protective equipment intended for inclusion within heading 9506, HTS, recognizes only that equipment designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions or flying objects. The sample E padded shin guard, specially designed to protect against leg blows in the game of soccer, and the sample C elbow support de luxe, which primarily provides protection against blows or falls, qualify as the kind of athletic protective equipment embraced by heading 9506. Although it is not addressed in your inquiry, this tariff treatment would also extend to the knee support de luxe but not to the balance of the knee supports and elbow supports depicted in the pictorial literature accompanying your letter.

Accordingly, the shin protector is classifiable in subheading 9506.99.2000, HTS, under the provision for articles and equipment for gymnastics, athletics, other sports * * * or outdoor games * * * football, soccer and polo articles and equipment, except balls, and parts and accessories thereof. The rate of duty is 4.9 percent ad valorem.

The elbow support de luxe is classifiable in subheading 9506.99.6080, HTS, the provision for articles and equipment for gymnastics, athletics, other sports * * * or outdoor games * * *; other. The rate of duty is 4.64 percent ad valorem.

The back support lumbago, sample A, is made of neoprene covered by knit nylon fabric on both sides. The support is belt-shaped, measuring approximately 95 centimeters in length. The support measures 26 centimeters in width at the center of the back, tapering to 14 centimeters in width near the support's rounded, hook and loop closures. The support has five flat plastic stiffeners, each measuring 19 centimeters by 3 centimeters. The stiffeners are inserted into five parallel pockets sewn into the interior back section of the support. The exterior of the support has a permanently attached, 12 centimeter wide, size adjustment band with hook and loop fabric. You state that the support will be used to treat and prevent back pain during weight lifting.

The knee support hinged, sample D, is made of neoprene covered by knit nylon fabric on both sides. The knee support measures approximately 30 centimeters in length. The tube-like support consists of two panels. The back panel measures 9 centimeters across and has a 5 centimeter hole at the back of the knee. At the top of the panel is a hook and loop adjustment strap. The front panel covers the front and sides of the knee area. It has a 3 centimeter hole at the knee, a wide hook and loop adjustment strap above the knee, and a narrow adjustment strap below the knee. On each side of the knee there is a covered, hinged metal support. The hinged supports run parallel to the leg, and measure approximately 26 centimeters in length. You state that the straps and hinges support the knee preventing "reinjury to a previously sensitive knee."

You contend that heading 9506, HTS, would apply to sample A, the back support lumbago, and sample D, the knee support hinged. As discussed above, heading 9506, HTS, will not apply to these items as their sole or primary function is not to directly absorb the impact of blows, collisions or flying objects.

As an alternative to heading 9506, HTS, you contend that the applicable heading for samples A and D is heading 9021, HTS, which provides for, inter alia, orthopedic appliances. The Explanatory Notes to heading 9021 provide that the heading includes appliances for preventing or correcting bodily deformities; or supporting or holding organs following an illness or operation. Despite the existence of adjustment straps and hinges on the knee support hinged and the stiffeners and adjustment band on the back support lumbago, we would not consider these items, which may be used to prevent sprains or strains and to support the area of the body where they are worn, to be of the class or kind of appliance used with recovery from bodily deformity or used following illness or operation of an incapacitating nature.

The pants, sample B, are made of neoprene covered by knit nylon fabric on both sides. The parts measure approximately 46 centimeters in length and would extend to the mid or lower thigh. They consist of three panels. There is a front panel, a back panel, and a third panel which connects the first two panels to provide additional room through the inner thighs and groin area. You state that the parts are used to prevent and treat groin strains.

The applicable subheading for sample A, the back support lumbago, sample B, the pants, and sample D, the knee support hinged, will be 6212.90.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: other, of man-made fibers or man made fibers and rubber or plastics. The duty rate will be 7 percent ad valorem.

The back support lumbago, pants and knee support hinged fall within textile category designation 659. Based upon international textile trade agreements, products of Korea are subject to quota restraints and visa requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 1, 1990.

CLA-2 CO:R:C:G 087552 CC
Category: Classification
Tariff No. 6212.90.0030

MR. STANLEY DREIR
THE DREIR CO., INC.
375 Turnpike Road
East Brunswick, NJ 08816

Re: Classification of a knee brace; classified in Heading 6212.

DEAR MR. DREIR:

This letter is in response to your inquiry of June 1, 1990, requesting tariff classification of a knee brace. A sample was submitted for examination.

Facts:

The submitted merchandise, which you call a knee stabilizer, is composed of neoprene rubber laminated on both the inner and outer surfaces with knit nylon fabric. This article has an opening near its center to provide patellar support.

Issue:

Whether the submitted knee brace is classifiable in Heading 6212 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

In Headquarters Ruling Letter (HRL) 086667 of May 9, 1990, copy attached, we issued a ruling to you, classifying a knee support under subheading 6212.90.0030, HTSUSA. The knee support of that ruling is very similar, if not identical, to the sample submitted for this inquiry. Therefore the merchandise at issue is classified under subheading 6212.90.0030, HTSUSA.

Holding:

The submitted merchandise is classified under subheading 6212.90.0030, HTSUSA, which provides for brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted, other, of man-made fibers or man-made fibers and rubber or plastics. The rate of duty is 7 percent ad valorem, and the textile category is 659.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 11, 1996.

CLA–2–90:RR:NC:1:119 A89561
Category: Classification
Tariff No. 9021.19.8500

MS. JANICE M. PREVITI
REEBOK INTERNATIONAL LTD.
100 Technology Center Drive
Stoughton, MA 02072

Re: The tariff classification of ankle braces from Taiwan.

DEAR MS. PREVITI:

In your letter dated November 15, 1996 you requested a tariff classification ruling.

The articles to be imported are ankle braces which resemble the upper part of a laced up boot and are made of a heavy reinforced textile material. The two samples you furnished are similarly constructed except that one has an inflating device (Insta Pump) for added firmness and support.

You believe that the ankle braces are designed for use by football players as ankle support and should be classified in subheading 9506.99.2000, HTS, as football * * * articles and equipment * * * and parts and accessories thereof.

Heading 9506, HTS, provides for, inter alia, articles and equipment for gymnastics, athletics, other sports and outdoor games. The Explanatory Notes (EN), which although not legally binding, constitute the official interpretation of the Harmonized System at the international level, provide at EN 95.06(B)(13) that Chapter 95 includes protective equipment for sports or games such as fencing masks and breast plates, elbow and knee pads, cricket pads and shin guards.

The sports protective equipment intended for inclusion within heading 9506, HTS, recognizes only that equipment designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions or flying objects. Heading 9506, HTS, will not apply to these ankle braces as their sole or primary function is support and not as impact protection against blows, collisions or flying objects.

The applicable subheading for the ankle braces will be 9021.19.8500, Harmonized Tariff Schedule of the United States (HTS), which provides for artificial joints and other orthopedic or fracture appliances; parts and accessories thereof * * * other. The duty rate will be 3.5 percent.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

If you have any questions pertaining to this matter, please contact National Import Specialist Jacques Preston of this office at (212) 466–5488.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

Washington, DC, December 17, 1996.

CLA–2–48:RR:NC:2:234 B 80243
Category: Classification
Tariff No. 4820.90.0000

MS. MARJORIE S. BRENMAN
VICE PRESIDENT
SAMUEL SHAPIRO & COMPANY, INC.
Suite 735, 111 S. Independence Mall East
Philadelphia, PA 19106–2521

Re: The tariff classification of a Desk Accessory Kit, from China or Taiwan.

DEAR MS. BRENMAN:

In your letter dated December 4, 1996, on behalf of your client, Frogs Pajamas, Inc., Philadelphia, you requested a tariff classification ruling. A sample was submitted, which will be retained for reference.

The sample is a shrink-wrapped set, consisting of the following articles:

a desk blotter, measuring about 50 cm x 30 cm, made of paper or paperboard covered on the reverse with a sheet of printed decorative paper depicting whales and other seagoing mammals. The blotter has pockets on its face side, about 6 cm wide, running the full width (30 cm) of the blotter, which are also covered with the same decorative paper.

a small paperboard lidded box, about 10 cm square, containing a package of yellow note paper. This box is covered with the same decorative paper as the blotter.

a small note-book or address book, 11 x 8 cm, covered with the same decorative paper.

a small paperboard box, similarly covered with the decorative paper, intended for use as a pencil holder, or for general desk-top accessories, such as paper clips or rubber bands.

four (4) yellow pencils, with erasers.

The sample constitutes "goods put up in sets for retail sale", whose essential character is imparted to it by the large desk blotter.

The applicable subheading for the Desk Accessory Kit, as described, will be 4820.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for: Other (than certain enumerated) articles of stationery, of paper or paperboard, including blotting pads. The rate of duty will be 4.2 percent.

(From January 1, 1997 through December 31, 1997, the rate of duty will be 3.7 percent.)

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact National Import Specialist Carl Abramowitz, at (212) 466–5733.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965235 BAS
Category: Classification
Tariff No. 6307.90.9989

MR. STANLEY DREIER
THE DREIER COMPANY
375 Turnpike Road East
East Brunswick, NJ 08816

Re: Modification of HQ 086667, May 9, 1990; Classification of a neoprene knee support.

DEAR MR. DREIER:

This is in reference to Headquarters Ruling Letter (HQ) 086667 issued to you on May 9, 1990, in response to your letter of March 8, 1990 to the U.S. Customs Service, Office of Regulations and Rulings, requesting reconsideration of NY Ruling Letter 841837, on the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a knee and thigh support and a waist/back support.

In HQ 086667, May 9, 1990, a neoprene knee support and a neoprene back/waist support were classified under subheading 6212.90.0030, HTSUSA, which provides for brassieres, girdles, corsets, braces, suspenders, garters, and similar articles and parts thereof, whether or not knitted or crocheted, other; of man-made fibers or man-made fibers and rubber or plastics. We have now had occasion to review that decision and found it to be in error insofar as the classification of the neoprene knee support is concerned. This ruling letter modifies HQ 086667, May 9, 1990 only insofar as it concerns the classification of the knee support.

Facts:

The merchandise under consideration consists of a knee support constructed of neoprene rubber laminated on both the inner and outer surfaces with knit nylon fabric. It is designed with an opening at the knee for patella support.

Issue:

Whether the neoprene knee support is properly classifiable in Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports, Heading 6212, HTSUSA, brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof or under heading 6307, HTSUSA,which provides for other made up textile articles?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the Headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the Headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The knee support is potentially classifiable in four HTSUSA headings. One possible heading is Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability. Other possible Headings for the merchandise include Heading 6212, HTSUSA, which provides for braces, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports or Heading 6307, HTSUSA, which provides for other made up textile articles.

HEADING 9021, HTSUSA

Heading 9021, HTSUSA, provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof."

Note 1 (b) of Chapter 90 maintains:

> This chapter does not cover supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles (Section XI).

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each Heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to Heading 9021 state that:

> This Heading **does not include** supporting belts or other support articles of the kind referred to in Note 1 (b) to this Chapter, * * * (generally Heading 62.12 or 63.07).

The neoprene knee support at issue depends on elasticity to support the joints and therefore, would be excluded from classification in Heading 9021 on the basis of Note 1 (b) of Chapter 90.

HEADING 9506

Having precluded classification in Heading 9021, HTSUSA, we must determine whether classification in Heading 9506, HTSUSA is appropriate. Heading 9506, HTSUSA provides for, *inter alia*, articles and equipment for gymnastics, athletics, other sports and outdoor games.

The ENs to Heading 9506 state in pertinent part:

> This heading covers:
>
> * * * * * * *
>
> (B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately of Heading 95.03), e.g.:
>
> * * * * * * *
>
> (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.

The sports protective equipment intended for inclusion within Heading 9506, HTSUSA, recognizes only that equipment designed exclusively for protection against injury, that is equipment having protective features with the sole or primarily function of directly absorbing the impact of blows, collisions or flying objects. See HQ 958791, dated May 13, 1996 (knee **pads** used for playing sports, elbow **pads** and wrist **guards** are classifiable in Heading 9506); HQ 958387, dated April 8, 1996 (protective gear including knee and elbow **pads** used by in-line skaters to protect their knees, elbows and wrists against impact and abrasion are properly classifiable in Heading 9506); HQ 957120, dated January 31, 1995 (ruling that wrist guards utilized for in line skating are classifiable under Heading 9506); HQ 958190, dated September 5, 1995 (ruling that a hand/forearm **pad**, shin **guards** and elbow **pad** specifically designed to prevent injury while playing football or soccer are properly classifiable as protective sports equipment under Heading 9506); HQ 951406, dated July 13, 1992 (knee **pads**, elbow **pads** and wrist **guards** consisting of hard plastic cups and high impact plastic splint inserts, utilized for sporting activities have the primary function of protecting the wearer during sporting activities and are therefore properly classifiable in Heading 9506) [**Emphasis added**]; NY 862972, dated May 31, 1991 (a padded shin **guard**, specially designed to protect against leg blows in the game of soccer and an elbow support which primarily provides protection against blows or falls qualify for classification in Heading 9506 but a hinged knee support and a back support were excluded from Heading 9506 because neither of these items have as their sole or primary function to directly absorb the impact of blows, collisions or flying objects).

Significantly, the neoprene knee support at issue, is described as neither a "pad" nor a "guard." Rather the item is called a "support." Nor is the knee support designed with the sole or primary function of directly absorbing the impact of blows, collisions or flying objects. Accordingly, Heading 9506, HTSUSA does not apply to the knee support as its function is not to protect from impact imposed by blows, collisions or flying objects.

Having eliminated the possibility of classification under Heading 9021, HTSUSA and Heading 9506, HTSUSA, we must now determine whether the subject merchandise is

properly classifiable in either chapter 62 as body supporting articles or in chapter 63 as other made up articles.

HEADING 6212

Heading 6212 provides for *inter alia*, braces. The ENs to Heading 6212, HTSUSA, state in pertinent part:

> The Heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof * * *
>
> The Heading includes, *inter alia*:
>
> (1) Brassieres of all kinds.
> (2) Girdles and panty-girdles.
> (3) Corselettes (combinations of girdles or panty-girdles and brassieres).
> (4) Corsets and corset belts. These are usually reinforced with flexible metallic, whalebone or plastic stays, and are generally fastened by lacing or by hooks.
> (5) Suspender-belts, hygienic belts, supersensory bandages, suspender jock-straps braces, suspenders, garters, shirt-sleeve supporting arm-bands and armlets.
> (6) Body belts for men (including those combined with under pants)
> (7) Maternity, post-pregnancy or similar supporting corrective belts, not being orthopedic appliances of Heading 90.21.

This office is of the opinion that the exemplars to Heading 6212 are united by the fact that they support apparel or other items (e.g. garters) or are forms of garments (e.g. brassieres) and are generally worn underneath other garments as, for example, maternity belts or men's body belts. See HQ 952568, dated January 28, 1993; HQ 952390, dated December 16, 1992; HQ 952201, dated October 26, 1992. The knee support, unlike the exemplars in the ENs to Heading 6212, is not worn as a garment or an accessory to a garment and is therefore not properly classifiable in Heading 6212.

HEADING 6307

Heading 6307, HTSUSA, is a residual provision which provides for other made up articles of textiles. Section Note 7 (e) of Section XI, which covers textiles and textile articles states in pertinent part as follows:

> 7. For the purposes of this Section the expression "made up" means:
> Assembled by sewing * * *

The instant article has been assembled by sewing, therefore they constitute made up textile articles. The Explanatory Notes state regarding Heading 6307:

> This Heading covers made up articles of any textile material which are **not included** more specifically in the Heading of Section XI or elsewhere in the Nomenclature.

Since the knee support at issue is not covered by any more specific heading it is classifiable in Heading 6307, HTSUSA.

The ENs to 6307 specifically provide for articles such as the knee support in Note (27) which notes that Heading 6307 includes, in particular:

> Support articles of the kind referred to in Note 1 (b) to Chapter 90 for joints (e.g., knees, ankles, elbows or wrist) or muscles (e.g., thigh muscles), **other than** those falling in other Headings of Section XI.

Customs has classified merchandise that is similar to the knee support at issue, knee braces with hinged support bars, under Heading 6307. See 963534, August 29, 2001; See HQ 964317, dated May 1, 2001; HQ 952568, dated January 28, 1993. In addition, this ruling is consistent with several other rulings in which articles supporting joints or organs were classified in Heading 6307. See HQ 958791, dated May 13, 1996 (revoking NY 840648 and classifying a knit elbow/knee support composed of 39 percent cotton and 61 percent man made fibers with ten magnets sewn into the supporter in Heading 6307); HQ 958190, dated September 5, 1995 (ruling that adjustable neoprene knee supports which support the joint solely by means of their elasticity should remain classified in Heading 6307); HQ 952295, dated January 5, 1993 (ruling that a heel cup/anklet composed of neoprene and a soft flexible material such as molded rubber or thermoplastic was classifiable in Heading 6307); HQ 951844, dated September 4, 1992 (ruling that a pair of cotton/stretch nylon wristbands neither of which contained a protective insert or pad were classifiable in Heading 6307); HQ 952390, dated December 16, 1992 (ruling that a lumbar support belt with four or six covered metal vertical stays is classifiable in Heading 6307); NY E82026, dated

June 16, 1999 (knee sleeve and wrist sleeve composed of neoprene rubber laminated on both sides with knit fabric classified in Heading 6307).

We note that in NY 862972, dated May 31, 1991, knee supports with hinges, were classified in Heading 6212, HTSUSA. In HQ 087552, dated October 1, 1990, a knee stabilizer composed of neoprene rubber laminated on both the inner and outer surfaces with knit nylon fabric was classified in Heading 6212, HTSUSA. Also in NY A89561, dated December 11, 1996, ankle braces made of a heavy reinforced textile material for the purpose of providing ankle support for football players were classified in Heading 9021, HTSUSA. Finally, in NY D88848, dated April 1, 1999, a knee brace and a knee immobilizer worn only during sporting events by players to provide some support and to reduce the probability of reinjuring the knee joint were classified in Heading 9021, HTSUSA. Appropriate steps are currently being taken to review these decisions and to modify and revoke those rulings as necessary.

Holding:

The neoprene knee support is properly classified in subheading 6307.90.9989, HTSUSA which provides for "Other made up articles, including dress patterns; Other; Other: Other: Other: Other." The general column one rate of duty is 7 percent *ad valorem*. There currently is no textile quota category applicable to this provision.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965237 BAS
Category: Classification
Tariff No. 6307.90.9989

DEBORAH SCOTT
MODAWEST INTERNATIONAL, INC.
5246 W. 111th Street
Los Angeles, CA 90045

Re: Modification of NY D88848, April 1, 1999; Classification of a knee brace and knee immobilizer.

DEAR MS. SCOTT:

This is in reference to New York Ruling Letter (NY) D88848 issued to you on April 1, 1999, in response to your letter of October 26, 1998 on behalf of Lantic USA, to the Director, Customs National Commodity Specialist Division in New York, requesting classification under the Harmonized Tariff Schedule of the United States (HTSUS) of an ankle support, a knee brace, a knee immobilizer and a thigh support.

In NY D88848, April 1, 1999, both a knee brace and a knee immobilizer were classified under subheading 9021.19.8500, HTSUSA, which provides for orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Artificial joints and other orthopedic or fracture appliances; parts and accessories thereof: Artificial joints and parts and accessories thereof: Other: Other. We have now had occasion to review that decision and found it to be in error insofar as the classification of the knee brace and knee immobilizer are concerned.

Facts:

The merchandise under consideration consists of a knee brace, item number N-KN-56, and a knee immobilizer, item number T-KN-73. The knee brace, item number N-KN-56

is constructed of neoprene laminated on both the inner and outer surface with nylon knit fabric. It is designed with an opening at the knee for patella support. It has two straps which fasten around the knee joint by means of strips similar to the VELCRO brand loop fastener. There are two sleeves, one on each side of the brace, containing a plastic hinged bar to give added stability and support.

The knee immobilizer, item number T–KN–73, is made of foam rubber laminated on the outer surface with brush knit fabric and the inner surface with a knit fabric. The interior side features a thick foam cushion in the center and foam strips, one on each side. It is held closed with a removable panel made of the same material, one on each exterior side. The panels feature a sleeve with metal stay and strips similar to the VELCRO brand fastener. It is designed to wrap around the knee.

Regarding both items, the advertising on one of the packages indicates that it is worn only during sporting events by players to provide some support and thus reduce the probability of re-injuring the knee joint.

Issue:

Whether the knee brace and knee immobilizer are properly classifiable in Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports, Heading 6212, HTSUSA, brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof or under heading 6307, HTSUSA, which provides for other made up textile articles?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the Headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the Headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The knee brace and immobilizer are potentially classifiable in four HTSUSA headings. One possible heading is Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability. Other possible Headings for the merchandise include Heading 6212, HTSUSA, which provides for braces, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports or Heading 6307, HTSUSA, which provides for other made up textile articles.

HEADING 9021, HTSUSA

Heading 9021, HTSUSA, provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof."

Note 1 (b) of Chapter 90 maintains:

> This chapter does not cover supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles (Section XI).

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each Heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to Heading 9021 state that:

> This Heading **does not include** supporting belts or other support articles of the kind referred to in Note 1 (b) to this Chapter, * * * (generally Heading 62.12 or 63.07).

The knee brace and immobilizer at issue do not solely depend on elasticity to support the knee joint and, therefore, would not be precluded from classification in heading 9021 on the basis of Note 1 (b) of Chapter 90.

According to Taber's Cyclopedic Medical Dictionary, Edition 15, 1985, orthopedic is defined as "concerning orthopedics; prevention or correction of deformities." A deformity is defined by Taber's Cyclopedic Medical Dictionary as "an alteration in the natural form of a part or organ. Distortion of any part or general disfigurement of the body. It may be acquired or congenital. If present after injury, usually implies the presence of fracture, dislocation or both. May be due to extensive swelling, extravasation of blood or rupture of muscles."

The packaging of both the knee brace and the knee immobilizer indicates that they are to be worn only during sporting events by players to provide some support and therefore reduce the possibility of reinjuring the knee joint. The merchandise is not described as being utilized to "prevent or correct bodily deformities." There is no mention of use of either the brace or the immobilizer at issue in relation to the presence of fractures or dislocation.

The ENs to Heading 9021 state, furthermore, that the orthopedic appliances referred to in the heading are appliances for "preventing or correcting bodily deformities" or "supporting or holding organs following an illness or operation." The ENs to Heading 9021 lists the type of orthopedic appliances that are included in that Heading as follows:

1. Appliances for hip diseases (coxalgia, etc.)
2. Humerus splints (to enable use of an arm after resection), (extension splints).
3. Appliances for the jaw.
4. Traction, etc., appliances for the fingers.
5. Appliances for treating Pott's disease (straightening head and spine)
6. Orthopaedic footwear, having enlarged leather stiffener, which may be reinforced with a metal or cork frame, made only to measure.
7. Special insoles, made to measure.
8. Dental appliances for correcting deformities of the teeth (braces, rings, etc.)
9. Orthopedic foot appliances (talipes appliances, leg braces, with or without spring support for the foot, surgical boots, etc.).
10. Trusses (inuinal, cural, umbilical, etc., trusses) and rupture appliances.
11. Appliances for correcting scoliosis and curvature of the spine as well as all medical or surgical corsets and belts (including certain supporting belts) characterized by:
    (a) Special pads, springs, etc., adjustable to fit the patient.
    (b) The materials of which they are made (leather, metal, plastic, etc.); or
    (c) The presence of reinforced parts, rigid pieces of fabric or bands of various widths.

    The special design of these articles for a particular orthopedic purpose distinguishes them from ordinary corsets and belts, whether or not the latter also serve to support or hold.
12. Orthopedic suspenders (**other than** simple suspenders of knitted, netted or crocheted materials, etc.)

The description of the knee brace and knee immobilizer at issue indicates they are not "ejusdem generis" or "of the same kind" of merchandise as orthopedic appliances listed in Heading 9021. The merchandise at issue is not intended to be worn post-operation or to correct a bodily deformity but rather to be used to enhance performance during exercise or sports activities. The ENs state that the splints and other fracture appliances referenced in Heading 9021 may be used either to immobilize injured parts of the body or to set fractures. While the ankle braces at issue may restrict movement, they do not **immobilize** the ankle as contemplated in the ENs to Heading 9021. **[Emphasis added]** See HQ 964317, dated May 1, 2001 (ruling that a knee brace made of 90 percent neoprene and 10 percent nylon or polyester and elastic with two hinged metal braces would be excluded from classification in Heading 9021 because it does not immobilize the knee); HQ 958190, dated September 5, 1995, (ruling that a neoprene wrist support containing permanently inserted, rigid plastic support bars that were designed to **immobilize** the wrist in order to relieve tendinitis and prevent recurrence of carpal tunnel syndrome were properly classifiable in 9021). **(Emphasis added)**

These items which may be used to prevent sprains or strains and to support the area of the body where they are worn are not considered to be of the class or kind of appliance used to compensate for bodily deformities or to be used following illnesses or operations of an incapacitating nature. See NY 862972, dated May 31, 1991 (hinged knee support and back support with plastic stiffeners excluded from Heading 9021). The appliances included, in Heading 9021, HTSUSA, e.g., appliances for hip disease, for correcting scoliosis and trusses (used generally for treating hernias) are similar in the sense that they enable the wearer to engage in the activities of everyday life. The knee brace and knee immobilizers

are clearly not items that are generally worn in order to function in everyday life but rather to engage in sports activities. We note that orthopaedic footwear and special insoles might also be used by the wearer to engage in athletic activities but the ENs provide that those items are made to measure and not marketed to a mass market as are the subject merchandise in the instant case. The fact that most, if not all, of the items referred to in the ENs to Heading 9021 must be fitted to a particular individual is also a feature which the items at issue do not share with the enumerated articles.

Although the knee brace and knee immobilizer would not be excluded from Heading 9021 because they do not derive support solely from their elasticity, as discussed above, the items are nonetheless not esjudem generis with the exemplars in Heading 9021.

HEADING 9506

Having precluded classification in Heading 9021, HTSUSA, we must determine whether classification in Heading 9506, HTSUSA is appropriate. Heading 9506, HTSUSA provides for, *inter alia*, articles and equipment for gymnastics, athletics, other sports and outdoor games.

The ENs to Heading 9506 state in pertinent part:

> This heading covers:
>
> * * * * * * *
>
> (B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately of Heading 95.03), e.g.:
>
> * * * * * * *
>
> (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.

The sports protective equipment intended for inclusion within Heading 9506, HTSUSA, recognizes only that equipment which is designed exclusively for protection against injury, that is equipment having protective features with the sole or primary function of directly absorbing the impact of blows, collisions or flying objects. See HQ 958791, dated May 13, 1996 (knee **pads** used for playing sports, elbow **pads** and wrist **guards** are classifiable in Heading 9506); HQ 958387, dated April 8, 1996 (protective gear including knee and elbow **pads** used by in-line skaters to protect their knees, elbows and wrists against impact and abrasion are properly classifiable in Heading 9506); HQ 957120, dated January 31, 1995 (ruling that wrist guards utilized for in line skating are classifiable under Heading 9506); HQ 958190, dated September 5, 1995 (ruling that a hand/forearm **pad**, shin **guards** and elbow **pad** specifically designed to prevent injury while playing football or soccer are properly classifiable as protective sports equipment under Heading 9506); HQ 951406, dated July 13, 1992 (knee **pads**, elbow **pads** and wrist **guards** consisting of hard plastic cups and high impact plastic splint inserts, utilized for sporting activities have the primary function of protecting the wearer during sporting activities and are therefore properly classifiable in Heading 9506) **[Emphasis added]**; NY 862972, dated May 31, 1991 (a padded shin **guard,** specially designed to protect against leg blows in the game of soccer and an elbow support which primarily provides protection against blows or falls qualify for classification in Heading 9506 but a hinged knee support and a back support were excluded from Heading 9506 because neither of these items have as their sole or primary function to directly absorb the impact of blows, collisions or flying objects).

Significantly, neither the knee brace nor the knee immobilizer at issue is described as either a "pad" or a "guard." Nor is the knee brace or knee immobilizer designed with the sole or primary function of directly absorbing the impact of blows, collisions or flying objects. Accordingly, Heading 9506, HTSUSA does not apply to the knee brace or immobilizer as their function is not to protect from impact imposed by blows, collisions or flying objects.

Having eliminated the possibility of classification under Heading 9021, HTSUSA and Heading 9506, HTSUSA, we must now determine whether the subject merchandise is properly classifiable in either chapter 62 as body supporting articles or in chapter 63 as other made up articles.

HEADING 6212

Heading 6212 provides for *inter alia*, braces. The ENs to Heading 6212, HTSUSA, state in pertinent part:

> The Heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof * * *

The Heading includes, *inter alia*:

(1) Brassieres of all kinds.
(2) Girdles and panty-girdles.
(3) Corselettes (combinations of girdles or panty-girdles and brassieres).
(4) Corsets and corset belts. These are usually reinforced with flexible metallic, whalebone or plastic stays, and are generally fastened by lacing or by hooks.
(5) Suspender-belts, hygienic belts, supersensory bandages, suspender jock-straps braces, suspenders, garters, shirt-sleeve supporting arm-bands and armlets.
(6) Body belts for men (including those combined with under pants)
(7) Maternity, post-pregnancy or similar supporting corrective belts, not being orthopedic appliances of Heading 90.21.

This office is of the opinion that the exemplars to Heading 6212 are united by the fact that they support apparel or other items (e.g. garters) or are garments (e.g. brassieres) and are generally worn underneath other garments as, for example, maternity belts or men's body belts. See HQ 952568, dated January 28, 1993; HQ 952390, dated December 16, 1992; HQ 952201, dated October 26, 1992. The knee brace and knee immobilizer, unlike the exemplars in the ENs to Heading 6212, are not worn as a garment or an accessory to a garment and are therefore not properly classifiable in Heading 6212.

HEADING 6307

Heading 6307, HTSUSA, is a residual provision which provides for other made up articles of textiles. Section Note 7 (e) of Section XI, which covers textiles and textile articles states in pertinent part as follows:

> 7. For the purposes of this Section the expression "made up" means:
> Assembled by sewing * * *

The instant articles have been assembled by sewing, therefore they constitute made up textile articles. The Explanatory Notes state regarding Heading 6307:

> This Heading covers made up articles of any textile material which are **not included** more specifically in the Heading of Section XI or elsewhere in the Nomenclature.

Since the knee brace and knee immobilizer are not covered by any more specific heading, they are classifiable in Heading 6307, HTSUSA.

The ENs to 6307 specifically provide for articles such as the knee brace and knee immobilizer in Note (27) which notes that Heading 6307 includes, in particular:

> Support articles of the kind referred to in Note 1 (b) to Chapter 90 for joints (e.g., knees, ankles, elbows or wrist) or muscles (e.g., thigh muscles), **other than** those falling in other Headings of Section XI.

Customs has classified merchandise that is similar to the knee brace and knee immobilizer at issue, knee braces with hinged support bars, under Heading 6307. See 963534, dated August 29, 2001; HQ 964317, dated May 1, 2001; HQ 952568, dated January 28, 1993. In addition, this ruling is consistent with several other rulings in which articles supporting joints or organs were classified in Heading 6307. See HQ 958791, dated May 13, 1996 (revoking NY 840648 and classifying a knit elbow/knee support composed of 39 percent cotton and 61 percent man-made fibers with ten magnets sewn into the supporter in Heading 6307); HQ 958190, dated September 5, 1995 (ruling that adjustable neoprene knee supports which support the joint solely by means of their elasticity should remain classified in Heading 6307); HQ 952295, dated January 5, 1993 (ruling that a heel cup/anklet composed of neoprene and a soft flexible material such as molded rubber or thermoplastic was classifiable in Heading 6307); HQ 951844, dated September 4, 1992 (ruling that a pair of cotton/stretch nylon wristbands neither of which contained a protective insert or pad were classifiable in Heading 6307); HQ 952390, dated December 16, 1992 (ruling that a lumbar support belt with four or six covered metal vertical stays is classifiable in Heading 6307); NY E82026, dated June 16, 1999 (knee sleeve and wrist sleeve composed of neoprene rubber laminated on both sides with knit fabric classified in Heading 6307).

We note that in NY 862972, dated May 31, 1991, knee supports with hinges, were classified in Heading 6212, HTSUSA. In HQ 087552, dated October 1, 1990 and HQ 086667, dated May 9, 1990, a knee stabilizer, and a knee support respectively both composed of neoprene rubber laminated on both the inner and outer surfaces with knit nylon fabric were classified in Heading 6212, HTSUSA. Also in NY A89561, dated December 11, 1996, ankle braces made of a heavy reinforced textile material for the purpose of providing ankle support for football players were classified in Heading 9021, HTSUSA. Appropriate steps

are currently being taken to review these decisions and to modify and revoke those rulings as necessary.

Holding:

The knee brace and knee immobilizer are properly classified in subheading 6307.90.9989, HTSUSA which provides for "Other made up articles, including dress patterns; Other; Other: Other: Other: Other." The general column one rate of duty is 7 percent *ad valorem*. There currently is no textile quota category applicable to this provision.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 965234 BAS
Category: Classification
Tariff No. 6307.90.9989

MR. JAMES P. SULLIVAN
SULLIVAN & LYNCH, P.C.
156 State Street
Boston, MA 02109

Re: Modification of NY 862972, May 31, 1991; Classification of hinged knee support.

DEAR MR. SULLIVAN:

This is in reference to New York Ruling Letter (NY) 862972 issued to you on May 31, 1991, in response to your letter of April 26, 1991 on behalf of Sports Products Marketing Inc. to the Director, Customs National Commodity Specialist Division in New York requesting a ruling on the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain Hummel Protect Support Products.

In NY 862972, May 31, 1991, five protective support products were classified in various subheadings including 6212.90.0030, HTSUS, 9506.99.6080, HTSUS, and 9506.99.2000, HTSUS. A hinged knee support was classified in subheading 6212.90.0030, HTSUS, which provides for brassieres, girdles, corsets, braces, suspenders, garters, and similar articles and parts thereof, whether or not knitted or crocheted, other; of man-made fibers or man-made fibers and rubber or plastics. We have now had occasion to review that decision and found it to be in error insofar as the classification of the hinged knee support is concerned. This ruling letter modifies NY 862972 insofar as it concerns the classification of the hinged knee support.

Facts:

The merchandise under consideration consists of a hinged knee support made of neoprene covered by knit nylon fabric on both sides. The knee support measures approximately 30 centimeters in length. The tube-like support consists of two panels. The back panel measures 9 centimeters across and has a 5–centimeter hole at the back of the knee. At the top of the panel is a hook and loop adjustment strap. The front panel covers the front and sides of the knee area. It has a 3–centimeter hole at the knee, a wide hook and loop adjustment strap above the knee, and a narrow adjustment strap below the knee. On each side of the knee there is a covered, hinged metal support. The hinged supports run parallel to the leg, and measure approximately 26 centimeters in length. You stated that the straps and hinges support the knee preventing "reinjury to a previously sensitive knee."

Issue:

Whether the hinged knee support is properly classifiable in Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried,

or implanted in the body, to compensate for a defect or disability, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports, Heading 6212, HTSUSA, brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof or under Heading 6307, HTSUSA, which provides for other made up textile articles?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the Headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the Headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The hinged knee support is potentially classifiable in four HTSUSA headings. One possible heading is Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability. Other possible Headings for the merchandise include Heading 6212, HTSUSA, which provides for braces, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports and Heading 6307, HTSUSA, which provides for other made up textile articles.

HEADING 9021, HTSUSA

Heading 9021, HTSUSA, provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof."

Note 1 (b) of Chapter 90 maintains:

> This chapter does not cover supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles (Section XI).

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each Heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to Heading 9021 state that:

> This Heading **does not include** supporting belts or other support articles of the kind referred to in Note 1 (b) to this Chapter, * * * (generally Heading 62.12 or 63.07).

While the hinged knee support at issue is a support article of textile material, the metal springs support the joints and therefore the knee support's intended effect on the organ to be supported does not derive solely from its elasticity. Accordingly, the hinged knee support is not precluded from classification in heading 9021, HTSUSA, on that basis.

According to Taber's Cyclopedic Medical Dictionary, Edition 15, 1985, orthopedic is defined as "concerning orthopedics; prevention or correction of deformities." A deformity is defined by Taber's Cyclopedic Medical Dictionary as "an alteration in the natural form of a part or organ. Distortion of any part or general disfigurement of the body. It may be acquired or congenital. If present after injury, usually implies the presence of fracture, dislocation or both. May be due to extensive swelling, extravasation of blood or rupture of muscles."

The importer in the instant case is Sports Products Marketing, Inc. Its products are generally utilized for the enhancement of an athlete's performance and protection from injury during sport activities. The importer does not describe the subject merchandise as being utilized to "prevent or correct bodily deformities." There is no mention of use of the hinged knee support in relation to the presence of fractures or dislocation. The hinged knee support is described as preventing reinjury to a previously "sensitive knee."

Products marketed to athletes to enhance performance are significantly distinguishable from items intended to be worn in order to function while recovering from a fracture or dislocation or to function in everyday life. Accordingly, we believe the subject merchandise is not included in Heading 9021.

The ENs to Heading 9021 state that the orthopedic appliances referred to in the heading are appliances for "preventing or correcting bodily deformities" or "supporting or holding organs following an illness or operation." The EN to Heading 9021 lists the type of orthopedic appliances that are included in that Heading as follows:

1. Appliances for hip diseases (coxalgia, etc.)
2. Humerus splints (to enable use of an arm after resection), (extension splints).
3. Appliances for the jaw.
4. Traction, etc., appliances for the fingers.
5. Appliances for treating Pott's disease (straightening head and spine)
6. Orthopaedic footwear, having enlarged leather stiffener, which may be reinforced with a metal or cork frame, made only to measure.
7. Special insoles, made to measure.
8. Dental appliances for correcting deformities of the teeth (braces, rings, etc.)
9. Orthopedic foot appliances (talipes appliances, leg braces, with or without spring support for the foot, surgical boots, etc.).
10. Trusses (inuinal, cural, umbilical, etc., trusses) and rupture appliances.
11. Appliances for correcting scoliosis and curvature of the spine as well as all medical or surgical corsets and belts (including certain supporting belts) characterized by:
    (a) Special pads, springs, etc., adjustable to fit the patient.
    (b) The materials of which they are made (leather, metal, plastic, etc.); or
    (c) The presence of reinforced parts, rigid pieces of fabric or bands of various widths.

    The special design of these articles for a particular orthopedic purpose distinguishes them from ordinary corsets and belts, whether or not the latter also serve to support or hold.
12. Orthopedic suspenders (**other than** simple suspenders of knitted, netted or crocheted materials, etc.)

The hinged knee support is not "ejusdem generis" or "of the same kind" of merchandise as the orthopedic appliances listed in Heading 9021. The merchandise at issue is not intended to be worn post-operation or to correct a bodily deformity but rather to be used to enhance performance during exercise or sports activities. The hinged knee support prevents common knee injuries and protects unstable knees. The opening helps stabilize the knee cap. The ENs state that the splints and other fracture appliances referenced in Heading 9021 may be used either to immobilize injured parts of the body or to set fractures. While the knee support at issue may restrict movement, it does not **immobilize** the knee as contemplated in the EN to Heading 9021. **[Emphasis added]** See HQ 964317, dated May 1, 2001 (ruling that a knee brace made of 90 percent neoprene and 10 percent nylon or polyester and elastic with two hinged metal braces would be excluded from classification in Heading 9021 because it does not immobilize the knee); HQ 958190, dated September 5, 1995, (ruling that a neoprene wrist support containing permanently inserted, rigid plastic support bars that were designed to **immobilize** the wrist in order to relieve tendinitis and prevent recurrence of carpal tunnel syndrome were properly classifiable in 9021). **(Emphasis added)**

Items which may be used to prevent sprains or strains and to support the area of the body where they are worn are not considered to be of the class or kind of appliance used with recovery from bodily deformity or used following illnesses or operations of an incapacitating nature. See NY 862972, dated May 31, 1991 (hinged knee support and back support with plastic stiffeners excluded from Heading 9021). The appliances included, in Heading 9021, HTSUSA, e.g., appliances for hip disease, for correcting scoliosis and trusses (used generally for treating hernias) are similar in the sense that they enable the wearer to engage in the activities of everyday life. The hinged knee support is not an item that is generally worn in order to function in everyday life but rather to engage in sports activities. We note that orthopaedic footwear and special insoles might also be used by the wearer to engage in athletic activities but the EN provides that those items are made to measure and not marketed to a mass market as are the subject merchandise in the instant case. The fact that most, if not all, of the items referred to in the EN to Heading 9021 must be fitted to a particular individual is also a feature which the item at issue does not share with the enumerated articles.

Although the hinged knee support would not be excluded from Heading 9021 because it does not derive support solely from its elasticity, as discussed above, it is nonetheless not ejusdem generis with the exemplars in Heading 9021.

HEADING 9506

Having precluded classification in Heading 9021, HTSUSA, we must determine whether classification in Heading 9506, HTSUSA is appropriate. Heading 9506, HTSUSA provides for, *inter alia*, articles and equipment for gymnastics, athletics, other sports and outdoor games

The ENs to Heading 9506 state in pertinent part:

> This heading covers:
>
> * * * * * * *
>
> (B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately of Heading 95.03), e.g.:
>
> * * * * * * *
>
> (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.

The sports protective equipment intended for inclusion within Heading 9506, HTSUSA, recognizes only such equipment designed exclusively for protection against injury, that is, equipment having protective features with the sole or primarily function of directly absorbing the impact of blows, collisions or flying objects. See HQ 958791, dated May 13, 1996 (knee **pads** used for playing sports, elbow **pads** and wrist **guards** are classifiable in Heading 9506); HQ 958387, dated April 8, 1996 (protective gear including knee and elbow **pads** used by in-line skaters to protect their knees, elbows and wrists against impact and abrasion are properly classifiable in Heading 9506); HQ 957120, dated January 31, 1995 (ruling that wrist guards utilized for in line skating are classifiable under Heading 9506); HQ 958190, dated September 5, 1995 (ruling that a hand/forearm **pad**, shin **guards** and elbow **pad** specifically designed to prevent injury while playing football or soccer are properly classifiable as protective sports equipment under Heading 9506); HQ 951406, dated July 13, 1992 (knee **pads**, elbow **pads** and wrist **guards** consisting of hard plastic cups and high impact plastic splint inserts, utilized for sporting activities have the primary function of protecting the wearer during sporting activities and are therefore properly classifiable in Heading 9506) **[Emphasis added];** NY 862972, dated May 31, 1991 (a padded shin **guard,** specially designed to protect against leg blows in the game of soccer and an elbow support which primarily provides protection against blows or falls qualify for classification in Heading 9506 but a hinged knee support and a back support were excluded from Heading 9506 because neither of these items have as their sole or primary function to directly absorb the impact of blows, collisions or flying objects).

Significantly, the hinged knee support at issue is described as neither a "pad" nor a "guard." Rather the item is called a "support." Nor is the hinged knee support designed with the sole or primary function of directly absorbing the impact of blows, collisions or flying objects. Accordingly, Heading 9506, HTSUSA does not apply to the hinged knee support as its function is not to protect from impact imposed by blows, collisions or flying objects.

Having eliminated the possibility of classification under Heading 9021, HTSUSA and Heading 9506, HTSUSA, we must now determine whether the subject merchandise is properly classifiable in either chapter 62 as body supporting articles or in chapter 63 as other made up articles.

HEADING 6212

Heading 6212 provides for *inter alia*, braces. The ENs to Heading 6212, HTSUSA, state in pertinent part:

> The Heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof * * *
>
> The Heading includes, *inter alia*:
>
> (1) Brassieres of all kinds.
> (2) Girdles and panty-girdles.
> (3) Corselettes (combinations of girdles or panty-girdles and brassieres).
> (4) Corsets and corset belts. These are usually reinforced with flexible metallic, whalebone or plastic stays, and are generally fastened by lacing or by hooks.
> (5) Suspender-belts, hygienic belts, supersensory bandages, suspender jock-straps braces, suspenders, garters, shirt-sleeve supporting arm-bands and armlets.
> (6) Body belts for men (including those combined with under pants)
> (7) Maternity, post-pregnancy or similar supporting corrective belts, not being orthopedic appliances of Heading 90.21.

This office is of the opinion that the exemplars to Heading 6212 are united by the fact that they support apparel or other items (e.g. garters) or are garments (e.g. brassieres) and are generally worn underneath other garments as, for example, maternity belts or men's body belts. See HQ 952568, dated January 28, 1993; HQ 952390, dated December 16, 1992; HQ 952201, dated October 26, 1992. The hinged knee brace, unlike the exemplars in the ENs to Heading 6212, is not worn as a garment or an accessory to a garment and is therefore not properly classifiable in Heading 6212.

HEADING 6307

Heading 6307, HTSUSA, is a residual provision which provides for other made up articles of textiles. Section Note 7 (e) of Section XI, which covers textiles and textile articles states in pertinent part as follows:

> 7. For the purposes of this Section the expression "made up" means:
> Assembled by sewing * * *

The instant article has been assembled by sewing, therefore they constitute made up textile articles. The Explanatory Notes state regarding Heading 6307:

> This Heading covers made up articles of any textile material which are **not included** more specifically in the Heading of Section XI or elsewhere in the Nomenclature.

Since the hinged knee support at issue is not covered by any more specific heading, it is classifiable in Heading 6307, HTSUSA.

The ENs to 6307 specifically provide for articles such as the hinged knee support in Note (27) which notes that Heading 6307 includes, in particular:

> Support articles of the kind referred to in Note 1 (b) to Chapter 90 for joints (e.g., knees, ankles, elbows or wrist) or muscles (e.g., thigh muscles), **other than** those falling in other Headings of Section XI.

Customs has classified merchandise that is almost identical to the knee support at issue, knee braces with hinged support bars, under Heading 6307. See 963534, dated August 29, 2001; HQ 964317, dated May 1, 2001; HQ 952568, dated January 28, 1993. In addition, this ruling is consistent with several other rulings in which articles supporting joints or organs were classified in Heading 6307. See HQ 958791, dated May 13, 1996 (revoking NY 840648 and classifying a knit elbow/knee support composed of 39 percent cotton and 61 percent man made fibers with ten magnets sewn into the supporter in Heading 6307); HQ 958190, dated September 5, 1995 (ruling that adjustable neoprene knee supports which support the joint solely by means of their elasticity should remain classified in Heading 6307); HQ 952295, dated January 5, 1993 (ruling that a heel cup/anklet composed of neoprene and a soft flexible material such as molded rubber or thermoplastic was classifiable in Heading 6307); HQ 951844, dated September 4, 1992 (ruling that a pair of cotton/stretch nylon wristbands neither of which contained a protective insert or pad were classifiable in Heading 6307); HQ 952390, dated December 16, 1992 (ruling that a lumbar support belt with four or six covered metal vertical stays is classifiable in Heading 6307); NY E82026, dated June 16, 1999 (knee sleeve and wrist sleeve composed of neoprene rubber laminated on both sides with knit fabric classified in Heading 6307).

We note that in HQ 087552, dated October 1, 1990 and HQ 086667, dated May 9, 1990, a knee stabilizer and a knee support respectively both composed of neoprene rubber laminated on both the inner and outer surfaces with knit nylon fabric were classified in Heading 6212, HTSUSA. Also in NY A89561, dated December 11, 1996, ankle braces made of a heavy reinforced textile material for the purpose of providing ankle support for football players were classified in Heading 9021, HTSUSA. Finally, in NY D88848, dated April 1, 1999, a knee brace and a knee immobilizer worn only during sporting events by players to provide some support and to reduce the probability of reinjuring the knee joint were classified in Heading 9021, HTSUSA. Appropriate steps are currently being taken to review these decisions and to modify and revoke those rulings as necessary.

Holding:

The hinged knee support is properly classified in subheading 6307.90.9989, HTSUSA which provides for "Other made up articles, including dress patterns; Other; Other: Other: Other: Other." The general column one rate of duty is 7 percent *ad valorem*. There currently is no textile quota category applicable to this provision.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 965236 BAS
Category: Classification
Tariff No. 6307.90.9989

MR. STANLEY DREIER
THE DREIER COMPANY, INC.
375 Turnpike Road
East Brunswick, NJ 08816

Re: Revocation of HQ 087552, October 1, 1990; Classification of a knee brace.

DEAR MR. DREIER:

This is in reference to Headquarters Ruling Letter (HQ) 087552 issued to you on October 1, 1990, in response to your letter of June 1, 1990 to the U.S. Customs Service, Office of Regulations and Rulings, requesting classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a knee brace.

In HQ 087552, October 1, 1990, a knee brace was classified under subheading 6212.90.0030, HTSUSA, which provides for brassieres, girdles, corsets, braces, suspenders, garters, and similar articles and parts thereof, whether or not knitted or crocheted, other; of man-made fibers or man-made fibers and rubber or plastics. We have now had occasion to review that decision and found it to be in error. This ruling letter revokes HQ 087552, dated October 1, 1990.

Facts:

The merchandise under consideration consists of a knee stabilizer, composed of neoprene rubber laminated on both the inner and outer surfaces with knit nylon fabric. The article has an opening near its center to provide patellar support.

Issue:

Whether the neoprene knee stabilizer is properly classifiable in Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports, Heading 6212, HTSUSA, brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof or under heading 6307, HTSUSA, which provides for other made up textile articles?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the Headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the Headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The knee brace is potentially classifiable in four HTSUSA headings. One possible heading is Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability. Other possible Headings for the merchandise include Heading 6212, HTSUSA, which provides for braces, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports or Heading 6307, HTSUSA, which provides for other made up textile articles.

HEADING 9021, HTSUSA

Heading 9021, HTSUSA, provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof."

Note 1 (b) of Chapter 90 maintains:

> This chapter does not cover supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from

their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles (Section XI).

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each Heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to Heading 9021 state that:

> This Heading **does not include** supporting belts or other support articles of the kind referred to in Note 1 (b) to this Chapter, * * * (generally Heading 62.12 or 63.07).

The neoprene knee brace at issue depends solely on its elasticity to support the joint and therefore, would be excluded from classification in heading 9021 on the basis of Note 1 (b) of Chapter 90.

HEADING 9506

Having precluded classification in Heading 9021, HTSUSA, we must determine whether classification in Heading 9506, HTSUSA is appropriate. Heading 9506, HTSUSA provides for, *inter alia*, articles and equipment for gymnastics, athletics, other sports and outdoor games.

The ENs to Heading 9506 state in pertinent part:

> This heading covers:
>
> * * * * * * *
>
> (B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately of Heading 95.03), e.g.:
>
> * * * * * * *
>
> (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.

The sports protective equipment intended for inclusion within Heading 9506, HTSUSA, recognizes only that equipment designed exclusively for protection against injury, that is equipment having protective features with the sole or primarily function of directly absorbing the impact of blows, collisions or flying objects. See HQ 958791, dated May 13, 1996 (knee **pads** used for playing sports, elbow **pads** and wrist **guards** are classifiable in Heading 9506); HQ 958387, dated April 8, 1996 (protective gear including knee and elbow **pads** used by in-line skaters to protect their knees, elbows and wrists against impact and abrasion are properly classifiable in Heading 9506); HQ 957120, dated January 31, 1995 (ruling that wrist guards utilized for in line skating are classifiable under Heading 9506); HQ 958190, dated September 5, 1995 (ruling that a hand/forearm **pad**, shin **guards** and elbow **pad** specifically designed to prevent injury while playing football or soccer are properly classifiable as protective sports equipment under Heading 9506); HQ 951406, dated July 13, 1992 (knee **pads,** elbow **pads** and wrist **guards** consisting of hard plastic cups and high impact plastic splint inserts, utilized for sporting activities have the primary function of protecting the wearer during sporting activities and are therefore properly classifiable in Heading 9506) **[Emphasis added];** NY 862972, dated May 31, 1991 (a padded shin **guard**, specially designed to protect against leg blows in the game of soccer and an elbow support which primarily provides protection against blows or falls qualify for classification in Heading 9506 but a hinged knee support and a back support were excluded from Heading 9506 because neither of these items have as their sole or primary function to directly absorb the impact of blows, collisions or flying objects).

Significantly, the neoprene knee brace at issue, is described as neither a "pad" nor a "guard." Rather the item is called a brace or stabilizer. Nor is the knee brace or stabilizer designed with the sole or primary function of directly absorbing the impact of blows, collisions or flying objects. Accordingly, Heading 9506, HTSUSA does not apply to the knee brace as its function is not to protect from impact imposed by blows, collisions or flying objects.

Having eliminated the possibility of classification under Heading 9021, HTSUSA and Heading 9506, HTSUSA, we must now determine whether the subject merchandise is properly classifiable in either chapter 62 as body supporting articles or in chapter 63 as other made up articles.

HEADING 6212

Heading 6212 provides for *inter alia*, braces. The ENs to Heading 6212, HTSUSA, state in pertinent part:

The Heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof * * *

The Heading includes, *inter alia*:

(1) Brassieres of all kinds.
(2) Girdles and panty-girdles.
(3) Corselettes (combinations of girdles or panty-girdles and brassieres).
(4) Corsets and corset belts. These are usually reinforced with flexible metallic, whalebone or plastic stays, and are generally fastened by lacing or by hooks.
(5) Suspender-belts, hygienic belts, supersensory bandages, suspender jock-straps braces, suspenders, garters, shirt-sleeve supporting arm-bands and armlets.
(6) Body belts for men (including those combined with under pants)
(7) Maternity, post-pregnancy or similar supporting corrective belts, not being orthopedic appliances of Heading 9021.

This office is of the opinion that the exemplars to Heading 6212 are united by the fact that they support apparel or other items (e.g. garters) or are forms of garments (e.g. brassieres) and are generally worn underneath other garments as, for example, maternity belts or men's body belts. See HQ 952568, dated January 28, 1993; HQ 952390, dated December 16, 1992; HQ 952201, dated October 26, 1992. The knee brace, unlike the exemplars in the ENs to Heading 6212, is not worn as a garment or an accessory to a garment and is therefore not properly classifiable in Heading 6212.

HEADING 6307

Heading 6307, HTSUSA, is a residual provision which provides for other made up articles of textiles. Section Note 7 (e) of Section XI, which covers textiles and textile articles states in pertinent part as follows:

7. For the purposes of this Section the expression "made up" means:
Assembled by sewing * * *

The instant article has been assembled by sewing, therefore they constitute made up textile articles. The Explanatory Notes state regarding Heading 6307:

This Heading covers made up articles of any textile material which are **not included** more specifically in the Heading of Section XI or elsewhere in the Nomenclature.

Since the knee support at issue is not covered by any more specific heading, it is classifiable in Heading 6307, HTSUSA.

The ENs to 6307 specifically provide for articles such as the knee support in Note (27) which notes that Heading 6307 includes, in particular:

Support articles of the kind referred to in Note 1 (b) to Chapter 90 for joints (e.g., knees, ankles, elbows or wrist) or muscles (e.g., thigh muscles), **other than** those falling in other Headings of Section XI.

Customs has classified merchandise that is similar to the knee brace at issue, knee braces with hinged support bars, under Heading 6307. See 963534, dated August 29, 2001; See HQ 964317, dated May 1, 2001; HQ 952568, dated January 28, 1993. In addition, this ruling is consistent with several other rulings in which articles supporting joints or organs were classified in Heading 6307. See HQ 958791, dated May 13, 1996 (revoking NY 840648 and classifying a knit elbow/knee support composed of 39 percent cotton and 61 percent man made fibers with ten magnets sewn into the supporter in Heading 6307); HQ 958190, dated September 5, 1995 (ruling that adjustable neoprene knee supports which support the joint solely by means of their elasticity should remain classified in Heading 6307); HQ 952295, dated January 5, 1993 (ruling that a heel cup/anklet composed of neoprene and a soft flexible material such as molded rubber or thermoplastic was classifiable in Heading 6307); HQ 951844, dated September 4, 1992 (ruling that a pair of cotton/stretch nylon wristbands neither of which contained a protective insert or pad were classifiable in Heading 6307); HQ 952390, dated December 16, 1992 (ruling that a lumbar support belt with four or six covered metal vertical stays is classifiable in Heading 6307); NY E82026, dated June 16, 1999 (knee sleeve and wrist sleeve composed of neoprene rubber laminated on both sides with knit fabric classified in Heading 6307).

We note that in NY 862972, dated May 31, 1991, knee supports with hinges, were classified in Heading 6212, HTSUSA. In HQ 087552, dated October 1, 1990 and HQ 086667,

dated May 9, 1990, a knee stabilizer, and a knee support respectively both composed of neoprene rubber laminated on both the inner and outer surfaces with knit nylon fabric were classified in Heading 6212, HTSUSA. Finally, in NY D88848, dated April 1, 1999, a knee brace and a knee immobilizer worn only during sporting events by players to provide some support and to reduce the probability of reinjuring the knee joint were classified in Heading 9021, HTSUSA. Appropriate steps are currently being taken to review these decisions and to modify and revoke those rulings as necessary.

Holding:

The neoprene knee brace is properly classified in subheading 6307.90.9989, HTSUSA which provides for "Other made up articles, including dress patterns; Other; Other: Other: Other: Other." The general column one rate of duty is 7 percent *ad valorem*. There currently is no textile quota category applicable to this provision.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT J]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:TE 965238 BAS
Category: Classification
Tariff No. 6307.90.9989

JANICE M. PREVITI
REEBOK INTERNATIONAL LTD.
100 Technology Center Drive
Stoughton, MA 02072

Re: Revocation of NY A89561, December 11, 1996; Classification of an ankle brace.

DEAR MS. PREVITI:

This is in reference to New York Ruling Letter (NY) A89561 issued to you on December 11, 1996, in response to your letter of November 15, 1996 to the Director, Customs National Commodity Specialist Division in New York, requesting classification under the Harmonized Tariff Schedule of the United States (HTSUS) of an ankle brace.

In NY A89561, dated December 11, 1996, an ankle brace was classified under subheading 9021.19.8500, HTSUSA, which provides for orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: artificial joints and other orthopedic or fracture appliances; parts and accessories thereof: Other: Other. We have now had occasion to review that decision and found it to be in error. This ruling letter revokes NY A89561, dated December 11, 1996.

Facts:

The merchandise under consideration consists of an ankle brace, which resembles the upper part of a laced up boot and is made of a heavy reinforced textile material. According to your letter, the ankle braces are designed for use by football players as ankle support. The ankle brace was classified in subheading 9021.19.8500, HTSUSA which provides for orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: artificial joints and other orthopedic or fracture appliances; parts and accessories thereof: Other: Other.

Issue:

Whether the ankle brace is properly classifiable in Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried, or im-

planted in the body, to compensate for a defect or disability, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports, Heading 6212, HTSUSA, brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof or under Heading 6307, HTSUSA, which provides for other made up textile articles?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the Headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the Headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The ankle brace is potentially classifiable in four HTSUSA headings. One possible heading is Heading 9021, HTSUSA, which provides for orthopedic appliances and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability. Other possible Headings for the merchandise include Heading 6212, HTSUSA, which provides for braces, Heading 9506, HTSUSA, which provides for articles and equipment for general physical exercise and other sports or Heading 6307, HTSUSA, which provides for other made up textile articles.

HEADING 9021, HTSUSA

Heading 9021, HTSUSA, provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof."

Note 1 (b) of Chapter 90 maintains:

> This chapter does not cover supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles (Section XI).

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each Heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to Heading 9021 state that:

> This Heading **does not include** supporting belts or other support articles of the kind referred to in Note 1 (b) to this Chapter, * * * (generally Heading 62.12 or 63.07).

The ankle brace at issue does not solely depend on elasticity to support the ankle joint and, therefore, would be not be precluded from classification in heading 9021 on the basis of Note 1 (b) of Chapter 90.

According to Taber's Cyclopedic Medical Dictionary, Edition 15, 1985, orthopedic is defined as "concerning orthopedics; prevention or correction of deformities." A deformity is defined by Taber's Cyclopedic Medical Dictionary as "an alteration in the natural form of a part or organ. Distortion of any part or general disfigurement of the body. It may be acquired or congenital. If present after injury, usually implies the presence of fracture, dislocation or both. May be due to extensive swelling, extravasation of blood or rupture of muscles."

You stated in your original letter that that the ankle brace is designed for use by football players to enhance performance and protect from injury during sport activities. You did not describe the subject merchandise as being utilized to "prevent or correct bodily deformities." There is no mention of use of the brace at issue in relation to the presence of fractures or dislocation.

In addition, Reebok International, Ltd. does not focus on the healthcare market but rather the sports gear/sports equipment market. Reebok International's website does not feature medical or healthcare products but rather focuses on athletic shoes and apparel. Accordingly, we not believe the subject merchandise is the type of orthopedic appliance described by Heading 9021, HTSUSA.

The ENs to Heading 9021 state that the orthopedic appliances referred to in the heading are appliances for "preventing or correcting bodily deformities" or "supporting or holding

organs following an illness or operation." The EN to Heading 9021 lists the type of orthopedic appliances that are included in that Heading as follows:

1. Appliances for hip diseases (coxalgia, etc.)
2. Humerus splints (to enable use of an arm after resection), (extension splints).
3. Appliances for the jaw.
4. Traction, etc., appliances for the fingers.
5. Appliances for treating Pott's disease (straightening head and spine)
6. Orthopaedic footwear, having enlarged leather stiffener, which may be reinforced with a metal or cork frame, made only to measure.
7. Special insoles, made to measure.
8. Dental appliances for correcting deformities of the teeth (braces, rings, etc.)
9. Orthopedic foot appliances (talipes appliances, leg braces, with or without spring support for the foot, surgical boots, etc.).
10. Trusses (inuinal, cural, umbilical, etc., trusses) and rupture appliances.
11. Appliances for correcting scoliosis and curvature of the spine as well as all medical or surgical corsets and belts (including certain supporting belts) characterized by:
    (a) Special pads, springs, etc., adjustable to fit the patient.
    (b) The materials of which they are made (leather, metal, plastic, etc.); or
    (c) The presence of reinforced parts, rigid pieces of fabric or bands of various widths.

    The special design of these articles for a particular orthopedic purpose distinguishes them from ordinary corsets and belts, whether or not the latter also serve to support or hold.
12. Orthopedic suspenders (**other than** simple suspenders of knitted, netted or crocheted materials, etc.)

The description of the ankle brace at issue indicates that it is not "ejusdem generis" or "of the same kind" of merchandise as orthopedic appliances listed in Heading 9021. The merchandise at issue is not intended to be worn post-operation or to correct a bodily deformity but rather to be used to enhance performance during exercise or sports activities. The ENs state that the splints and other fracture appliances referenced in Heading 9021 may be used either to immobilize injured parts of the body or to set fractures. While the ankle braces at issue may restrict movement, they do not **immobilize** the ankle as contemplated in the EN to Heading 9021. **[Emphasis added]** See HQ 964317, dated May 1, 2001 (ruling that a knee brace made of 90 percent neoprene and 10 percent nylon or polyester and elastic with two hinged metal braces would be excluded from classification in Heading 9021 because it does not immobilize the knee); HQ 958190, dated September 5, 1995, (ruling that a neoprene wrist support containing permanently inserted, rigid plastic support bars that were designed to **immobilize** the wrist in order to relieve tendinitis and prevent recurrence of carpal tunnel syndrome were properly classifiable in 9021). **(Emphasis added)**

These items which may be used to prevent sprains or strains and to support the area of the body where they are worn are not considered to be of the class or kind of appliance used with recovery from bodily deformity or used following illnesses or operations of an incapacitating nature. See NY 862972, dated May 31, 1991 (hinged knee support and back support with plastic stiffeners excluded from Heading 9021). The appliances included in Heading 9021, HTSUSA, e.g., appliances for hip disease, for correcting scoliosis and trusses (used generally for treating hernias) are similar in the sense that they enable the wearer to engage in the activities of everyday life. The ankle brace is clearly not an item that is generally worn in order to function in everyday life but rather to engage in sports activities. We note that orthopaedic footwear and special insoles might also be used by the wearer to engage in athletic activities but the EN provides that those items are made to measure and not marketed to a mass market as are the subject merchandise in the instant case. The fact that most, if not all, of the items referred to in the EN to Heading 9021 must be fitted to a particular individual is also a feature which the items at issue do not share with the enumerated articles.

Although the ankle brace would not be excluded from Heading 9021 because it does not derive support solely from its elasticity, as discussed above, the item is nonetheless not esjudem generis with the exemplars in Heading 9021.

HEADING 9506

Having precluded classification in Heading 9021, HTSUSA, we must determine whether classification in Heading 9506, HTSUSA is appropriate. Heading 9506, HTSUSA pro-

vides for, *inter alia*, articles and equipment for gymnastics, athletics, other sports and outdoor games.

The ENs to Heading 9506 state in pertinent part:

> This heading covers:
>
> * * * * * * *
>
> (B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately of Heading 95.03), e.g.:
>
> * * * * * * *
>
> (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.

The sports protective equipment intended for inclusion within Heading 9506, HTSUSA, recognizes only that equipment which is designed exclusively for protection against injury, that is equipment having protective features with the sole or primarily function of directly absorbing the impact of blows, collisions or flying objects. See HQ 958791, dated May 13, 1996 (knee **pads** used for playing sports, elbow **pads** and wrist **guards** are classifiable in Heading 9506); HQ 958387, dated April 8, 1996 (protective gear including knee and elbow **pads** used by in-line skaters to protect their knees, elbows and wrists against impact and abrasion are properly classifiable in Heading 9506); HQ 957120, dated January 31, 1995 (ruling that wrist guards utilized for in line skating are classifiable under Heading 9506); HQ 958190, dated September 5, 1995 (ruling that a hand/forearm **pad**, shin **guards** and elbow **pad** specifically designed to prevent injury while playing football or soccer are properly classifiable as protective sports equipment under Heading 9506); HQ 951406, dated July 13, 1992 (knee **pads**, elbow **pads** and wrist **guards** consisting of hard plastic cups and high impact plastic splint inserts, utilized for sporting activities have the primary function of protecting the wearer during sporting activities and are therefore properly classifiable in Heading 9506) **[Emphasis added]**; NY 862972, dated May 31, 1991 (a padded shin **guard**, specially designed to protect against leg blows in the game of soccer and an elbow support which primarily provides protection against blows or falls qualify for classification in Heading 9506 but a hinged knee support and a back support were excluded from Heading 9506 because neither of these items have as their sole or primary function to directly absorb the impact of blows, collisions or flying objects).

Significantly, the ankle brace at issue is described as neither a "pad" nor a "guard." Nor is the ankle brace designed with the sole or primary function of directly absorbing the impact of blows, collisions or flying objects. Accordingly, Heading 9506, HTSUSA does not apply to the knee support as its function is not to protect from impact imposed by blows, collisions or flying objects.

Having eliminated the possibility of classification under Heading 9021, HTSUSA and Heading 9506, HTSUSA, we must now determine whether the subject merchandise is properly classifiable in either chapter 62 as body supporting articles or in chapter 63 as other made up articles.

HEADING 6212

Heading 6212 provides for *inter alia*, braces. The ENs to Heading 6212, HTSUSA, state in pertinent part:

> The Heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof * * *
>
> The Heading includes, *inter alia*:
>
> (1) Brassieres of all kinds.
> (2) Girdles and panty-girdles.
> (3) Corselettes (combinations of girdles or panty-girdles and brassieres).
> (4) Corsets and corset belts. These are usually reinforced with flexible metallic, whalebone or plastic stays, and are generally fastened by lacing or by hooks.
> (5) Suspender-belts, hygienic belts, supersensory bandages, suspender jock-straps braces, suspenders, garters, shirt-sleeve supporting arm-bands and armlets.
> (6) Body belts for men (including those combined with under pants)
> (7) Maternity, post-pregnancy or similar supporting corrective belts, not being orthopedic appliances of Heading 90.21.

This office is of the opinion that the exemplars to Heading 6212 are united by the fact that they support apparel or other items (e.g. garters) or are garments (e.g. brassieres) and are generally worn underneath other garments as, for example, maternity belts or men's body belts. See HQ 952568, dated January 28, 1993; HQ 952390, dated December

16, 1992; HQ 952201, dated October 26, 1992. The ankle brace, unlike the exemplars in the ENs to Heading 6212, is not worn as a garment or an accessory to a garment and is therefore not properly classifiable in Heading 6212.

HEADING 6307

Heading 6307, HTSUSA, is a residual provision which provides for other made up articles of textiles. Section Note 7 (e) of Section XI, which covers textiles and textile articles states in pertinent part as follows:

> 7. For the purposes of this Section the expression "made up" means:
> Assembled by sewing * * *

The instant article has been assembled by sewing, therefore they constitute made up textile articles. The Explanatory Notes state regarding Heading 6307:

> This Heading covers made up articles of any textile material which are **not included** more specifically in the Heading of Section XI or elsewhere in the Nomenclature.

Since the ankle brace at issue is not covered by any more specific heading it is classifiable in Heading 6307, HTSUSA.

The ENs to 6307 specifically provide for articles such as the knee support in Note (27) which notes that Heading 6307 includes, in particular:

> Support articles of the kind referred to in Note 1 (b) to Chapter 90 for joints (e.g., knees, ankles, elbows or wrist) or muscles (e.g., thigh muscles), **other than** those falling in other Headings of Section XI.

This ruling is consistent with several other rulings in which articles supporting joints or organs were classified in Heading 6307. See HQ 963534, dated August 29, 2001, HQ 964317, dated May 1, 2001; See HQ 958791, dated May 13, 1996 (revoking NY 840648 and classifying a knit elbow/knee support composed of 39 percent cotton and 61 percent man-made fibers with ten magnets sewn into the supporter in Heading 6307); HQ 958190, dated September 5, 1995 (ruling that adjustable neoprene knee supports which support the joint solely by means of their elasticity should remain classified in Heading 6307); HQ 952568, dated January 28, 1993 (knee brace with hinged support bars classified in Heading 6307); HQ 952295, dated January 5, 1993 (ruling that a heel cup/anklet composed of neoprene and a soft flexible material such as molded rubber or thermoplastic was classifiable in Heading 6307); HQ 951844, dated September 4, 1992 (ruling that a pair of cotton/stretch nylon wristbands neither of which contained a protective insert or pad were classifiable in Heading 6307); HQ 952390, dated December 16, 1992 (ruling that a lumbar support belt with four or six covered metal vertical stays is classifiable in Heading 6307); NY E82026, dated June 16, 1999 (knee sleeve and wrist sleeve composed of neoprene rubber laminated on both sides with knit fabric classified in Heading 6307).

We note that in NY 862972, dated May 31, 1991, knee supports with hinges, were classified in Heading 6212, HTSUSA. In HQ 087552, dated October 1, 1990 and HQ 086667, dated May 9, 1990, a knee stabilizer, and a knee support respectively both composed of neoprene rubber laminated on both the inner and outer surfaces with knit nylon fabric were classified in Heading 6212, HTSUSA. Finally, in NY D88848, dated April 1, 1999, a knee brace and a knee immobilizer worn only during sporting events by players to provide some support and to reduce the probability of reinjuring the knee joint were classified in Heading 9021, HTSUSA. Appropriate steps are currently being taken to review these decisions and to modify and revoke those rulings as necessary.

Holding:

The ankle brace is properly classified in subheading 6307.90.9989, HTSUSA which provides for "Other made up articles, including dress patterns; Other; Other: Other: Other: Other." The general column one rate of duty is 7 percent *ad valorem*. There currently is no textile quota category applicable to this provision.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF WOVEN COTTON HANDKERCHIEFS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a ruling letter and treatment relating to the classification of woven cotton handkerchiefs with decorative design in contrasting stitching.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter relating to the tariff classification of woven cotton handkerchiefs with decorative design in contrasting stitching under the Harmonized Tariff Schedule of the United States (HTSUS), and any treatment previously accorded by the Customs Service to substantially identical merchandise. Notice of the proposed revocation was published in the CUSTOMS BULLETIN on August 22, 2001, Vol. 35, No. 34. One comment was received in support of the proposed revocation.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, (202) 927–2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to

properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the CUSTOMS BULLETIN on August 22, 2001, Vol. 35, No. 34, proposing to revoke Customs New York Ruling (NY) G83802, dated October 10, 2000, pertaining to the tariff classification of woven cotton handkerchiefs with decorative design in a contrasting stitching under the HTSUS. One comment in support of this proposed revocation was received.

In NY G82728, Customs ruled that the subject handkerchiefs, with decorative embroidery in contrasting stitching, were classified in subheading 6213.20.1000, HTSUSA, which provides for "Handkerchiefs: Of cotton: Hemmed, not containing lace or embroidery." Since the issuance of this ruling, Customs has reviewed the classification of these items and has determined that the cited ruling is in error. The subject handkerchiefs are "embroidered" within the meaning of the HTSUSA and are correctly classified in subheading 6213.20.2000, HTSUSA, which provides for "Handkerchiefs: Of cotton: Other." The general column one duty rate is 7.2 percent *ad valorem*. The textile category is 330.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY G82728 dated October 10, 2000, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter HQ 964618 (see "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised the Customs Service during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: October 1, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, October 1, 2001.

CLA-2 RR:CR:TE 964618 ASM
Category: Classification
Tariff No. 6213.20.2000

JOHN B. PELLEGRINI, ESQ.
ROSS & HARDIES
PARK AVENUE TOWER
65 East 55th Street
New York, NY 10022-3219

Re: Request for Administrative Review; Reconsideration and Revocation of NY G82728: Woven cotton handkerchiefs with decorative design in contrasting stitching.

DEAR MR. PELLEGRINI:

This is in response to your letter, dated October 23, 2000, on behalf of I. Shalom & Company, Inc., requesting reconsideration of Customs New York Ruling (NY) G82728, dated October 10, 2000, which classified woven cotton handkerchiefs with decorative designs in contrasting stitching under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY G82728 by providing the correct classification for the subject merchandise. Samples were submitted to this office for examination.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY G82728 was published on August 22, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 34. One comment in support of the proposed revocation was received.

Facts:

The subject items are three hemmed woven 100 percent cotton handkerchiefs, which are identified under separate style numbers. Style No. 114C is constructed of plain white woven fabric measuring approximately 40 cm by 53 cm. A single letter with decorative stitching on either side appears in contrasting color in the upper right quadrant and measures approximately 6 cm in length and 1 cm in height. Style No. 115C is constructed of plain white woven fabric measuring approximately 40 cm by 53 cm. There is no initial and the decorative stitching consists of abstract designs in contrasting color in the upper right quadrant measuring approximately 5 cm in length and approximately 8 mm in height. Style No. 146X is a white cotton square measuring 40–cm. The initial "M" is stitched in contrasting color at the lower left quadrant and measures approximately 22 mm by 18 mm. The letter elements on this handkerchief will vary with some monograms being only 5 mm in width.

In NY G82728, dated October 10, 2000, the subject handkerchiefs were classified in subheading 6213.20.1000, HTSUSA, which provides for "Handkerchiefs: Of cotton:

Hemmed, not containing lace or embroidery." You disagree with this classification and claim that the handkerchiefs should be classified under subheading 6213.20.2000, HTSUSA, as "Other" (embroidered).

Issue:

What is the proper classification for the merchandise?

Law And Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Under the HTSUSA, Chapter 58 contains a definition of "embroidery" at Note 6, as follows:

> 6. In heading 5810, the expression "*embroidery*" means, *inter alia*, embroidery with metal or glass thread on a visible ground of textile fabric, and sewn applique work of sequins, beads or ornamental motifs of textile or other materials. * * *

The EN to heading 5810, further provides that the embroidery threads are usually of textiles, and that "Embroidery is obtained by working with embroidering threads on a pre-existing ground of * * * woven fabric, * * * in order to produce an ornamental effect on that ground."

Headquarters Ruling (HQ) 084964, dated September 19, 1989, cites Chapter 58, Note 6, and the EN to heading 5810 in determining that handkerchiefs embroidered with a triangle measuring 14 cm by 9 cm, in non-contrasting stitching, are properly classified in subheading 6213.20.1000, HTSUSA, which provides for "Handkerchiefs: of cotton: Hemmed, not containing lace or embroidery." In this ruling it was determined that the embroidery did not produce an ornamental effect and did not affect the classification of the merchandise since it failed to perform a commercial purpose. *See also* HQ 086860, dated November 9, 1990, which affirms the decision in HQ 084964, and cites to *United States v. Harden*, 68 Fed. 182, 15 C.C.A. 358, cert. denied, 163 U.S. 709 (1895) wherein the Court stated that "the embroidery of a single letter upon the corner of the handkerchief is so limited in its extent and of such comparative narrowness as not to require that the handkerchiefs should be regarded as embroidered."

In the subject case, all three styles have decorative stitching in a contrasting thread to the white cotton handkerchief. Furthermore, the designs are not sewn on a corner of the handkerchief but are clearly visible and intended to be marketed with the embroidery visible to the purchaser. In particular, the handkerchief identified as Style No. 146X bears a distinctive single letter monogram measuring approximately 22 mm by 18 mm. Therefore, it is not subject to *United States v. Harden (supra)* because the monogram is neither limited in its extent nor comparatively narrow in design.

It is also important to note that in defining the term "embroidery" under the HTSUSA, HQ 086860 (*supra)* cites to the case of *Baylis Brothers, Inc. v. United States*, 60 Cust. Ct. 336, C.D. 3383 (1968), aff'd., 416 F.2d 1383 (CCPA 1969) which involved the classification under the Tariff Schedules of the United States (predecessor of the HTSUSA), of smocked dress fronts. The *Baylis* case addressed whether or not the U.S. Customs Court was correct in holding that the definition of the term "embroidery" when used in the Tariff Act, ordinarily requires that for a thing to be embroidered, there must be an ornamental, superimposed stitching which is the result of needlework. In *Baylis* the U.S. Court of Customs and Patent Appeals affirmed the lower court's holding by finding that "* * * the operative feature of embroidery, for tariff purposes, is the ornamental characteristic of the stitching." In applying the *Baylis* decision to the merchandise which is now at issue, we find that the decorative designs appearing on each of the subject articles can be characterized as ornamental, superimposed stitching which is the result of needlework.

The EN to 6213, states that, pursuant to Chapter 62, Note 7, handkerchiefs in this heading cannot exceed 60 cm in length. The subject handkerchiefs are each less than 60 cm in

length. Inasmuch as these woven cotton handkerchiefs bear ornamental designs stitched in contrasting color and will be marketed so as to be visible to the purchaser, we have determined that the decorative stitching has produced an ornamental effect and performs a commercial purpose.

In view of the foregoing, the subject handkerchiefs are "embroidered" within the meaning of the HTSUSA.

Holding:

NY G83802, dated October 10, 2000, is hereby revoked.

The subject merchandise is correctly classified in subheading 6213.20.2000, HTSUSA, which provides for " Handkerchiefs: Of cotton: Other." The general column one duty rate is 7.2 percent *ad valorem*. The textile category is 330.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

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